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104th Congress, 2nd Session — — — — — House Report 104-862

INVESTIGATION INTO THE WHITE HOUSE
AND DEPARTMENT OF JUSTICE ON
SECURITY OF FBI BACKGROUND INVES-
TIGATION FILES

INTERIM REPORT

NINETEENTH REPORT

BY THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT

together with

ADDITIONAL AND MINORITY VIEWS



SEPTEMBER 28, 1996.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, DC, September 28, 1996.

Hon. NEWT GINGRICH,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: By direction of the Committee on Government Reform and Oversight, I submit herewith the committee's nineteenth report to the 104th Congress.

WILLIAM F. CLINGER, Jr., *Chairman.*

CONTENTS

		Page
I.	Executive summary	1
	A. Introduction	1
	1. The conduct of White House officials	2
	2. The conduct of the FBI	3
	B. The matter of the FBI files	4
	1. The discovery of the files: Travelgate to Filegate	4
	2. The discovery of the Billy Dale file	5
	3. White House's changing explanations for "Filegate"	6
	4. A "file clerk" caused the problem—June 5, 1996	6
	5. The General Accounting Office caused the problem—June 6, 1996	7
	6. "An innocent bureaucratic mistake"—June 7, 1996	7
	7. The Secret Service caused the problem—June 10	7
	8. Procedural safeguards against "innocent snafus"	9
	9. Livingstone and Marceca	10
	10. Secret Service hearings	13
	11. FBI internal investigation and report	13
	12. Attorney General Reno refers FBI files investigation to Judge Starr	14
	13. Improper contacts with the FBI	15
	C. Findings	16
	D. Recommendations	17
II.	White House Office of Personnel Security	18
	A. History of the Office of Personnel Security	18
	1. White House Security Office practice and procedures	19
	2. Updating the background files	20
	3. The transition from the Bush administration	22
	B. Clinton administration personnel and operations of the office	23
	1. Who hired Craig Livingstone?	23
	2. Craig Livingstone's quest for the Military Office	30
	3. Livingstone's duties as Director of the White House Office of Personnel Security	31
	4. Livingstone's salary requests	34
	5. Livingstone brings on new staff	35
III.	Detail of Anthony Marceca to the White House	36
	A. Introduction	36
	B. Marceca parlays his political background with Craig Livingstone into a White House position	37
	1. Marceca's request for a detail to the White House	39
	2. The White House requests Marceca	40
	3. Marceca has access to the White House before his detail	41
	C. Marceca's introduction to the White House Office of Personnel Security	41
	1. Introduction	41
	2. Discrepancies in Marceca's testimony	42
	D. Marceca begins the Update Project	44
	1. Introduction	44
	2. Marceca's understanding of the Secret Service lists	45
	3. Marceca's explanation of the Update Project	46
	4. The "Dead Bin"	49
	5. Marceca's other duties	51
	E. Marceca's detail ends	51
	1. White House attempts to extend Marceca's detail	51
	2. Marceca does advance for the Clinton administration	53
IV.	Initial discovery of "Tony's Files"	55

VI

	Page
A. Lisa Wetzl's background	56
1. Ms. Wetzl, who had no experience, should not have assumed the amount of responsibility she undertook	56
2. Limited inquiry	58
B. Lisa Wetzl discovers "Tony's Files"	59
1. Wetzl to complete "Update Project"	59
2. Marlin Fitzwater, or too many files	59
C. The "Update Project" is redone by Lisa Wetzl	60
1. Wetzl destroys the Secret Service list	60
2. Process by which the project is completed	61
3. Extra files are boxed up and archived	62
V. White House Counsel's Office discovery of FBI files	62
A. Billy Dale's file	62
1. Office of Records Management responds to subpoena	62
2. White House Counsel determines that FBI file is a personnel file	63
3. Natalie Williams passes on information to Wendy White	63
4. Wendy White's handling of Billy Dale file	64
a. May 21, 1996—orders the Dale file from OPS	64
B. Chairman Clinger's June 5, 1996 statement	64
1. The committee receives 1,000 pages	64
2. Chairman Clinger's statement on the Billy Dale file	65
VI. FBI involvement in the files matter	65
A. Director Freeh initiates investigation	65
1. Tom Kelley's initial investigation	66
2. Howard Shapiro takes over the investigation	67
B. FBI report	67
C. Attorney General Janet Reno refers the matter to Independent Counsel Kenneth W. Starr	70
D. FBI contacts the White House after Reno's referral	71
1. Freeh requests that Chairman Clinger review background in- vestigations rather than question agents	71
2. Shapiro notifies White House Counsel's Office, whom he re- ferred to as "affected parties," of potential incrimination Nuss- baum's statement	72
a. Sherburne's telephone tree	75
2. Shapiro dispatches agents to interrogate Sculimbrene	77
3. Shapiro made his own assessment that the matter was not within Independent Counsel Starr's jurisdiction	79
4. Nussbaum's criminal referral	81
5. Shapiro edits letter for White House Counsel that is critical of Chairman Clinger	82
VII. Politicization of the FBI	84
A. General Counsel of the FBI hand delivers Gary Aldrich book to White House Counsel	87
1. Justifications	87
2. Hearing testimony	88
B. Distribution of book within the White House	89
1. Cheryl Mills' review	89
2. Christopher Cerf's review	90
C. Summary of 4 years of politicization of the FBI	91
1. Past procedures for White House utilized the Department of Justice	91
2. First Counsel's Office not staffed with agents	92
3. Travel Office, FBI files, and Aldrich book	92
VIII. Secret Service explanation	92
A. Introduction	92
B. The Secret Service's role in obtaining White House access	95
C. The lists used by the White House Office of Personnel Security	96
D. The only list they could be talking about	96
E. Deactivation	98
IX. White House passes and security issues	100
A. Lax White House security procedures were a precursor to FBI files issue	100
1. Problems with White House passes	100
2. Unsuitable personnel in charge of overseeing the Office of Personnel Security	103
B. The process by which background investigations are conducted	105

VII

	Page
1. Pre-employment steps	105
a. Security interview	105
b. Submit to a drug test	105
c. An initial name check	105
d. An extensive FBI name check	105
e. Obtaining a temporary pass	106
f. Obtaining a permanent pass	106
C. Background investigations of Clinton White House staff	107
1. White House staff provided minimal cooperations to the FBI	107
2. Problems in the background investigations of Clinton adminis- tration staff	108
D. Secret Service concerns	109
1. Delays in submitting background investigations to the Secret Service	109
2. The Secret Service raised concerns about the content of the background files	110
E. White House drug testing program	111
F. CIA compartmented clearances	112

VIEWS

Additional views of Hon. William F. Clinger, Jr., Hon. Benjamin A. Gilman, Hon. Constance A. Morella, Hon. John L. Mica, and Hon. Dick Chrysler	115
Minority views of Hon. Cardiss Collins, Hon. Henry A. Waxman, Hon. Tom Lantos, Hon. Robert E. Wise, Jr., Hon. Major R. Owens, Hon. Edolphus Townes, Hon. John M. Spratt, Jr., Hon. Louise McIntosh Slaughter, Hon. Paul E. Kanjorski, Hon. Gary A. Condit, Hon. Collin C. Peterson, Hon. Karen L. Thurman, Hon. Carolyn B. Maloney, Hon. Thomas M. Barrett, Hon. Barbara-Rose Collins, Hon. Eleanor Holmes Norton, Hon. James P. Moran, Hon. Gene Green, Hon. Carrie P. Meek, Hon. Chaka Fattah, Hon. Bill K. Brewster, Hon. Tim Holden, and Hon. Elijah E. Cummings	116

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104TH CONGRESS } 2nd Session }	HOUSE OF REPRESENTATIVES {	REPORT 104-862
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INVESTIGATION INTO THE WHITE HOUSE AND DEPARTMENT OF JUSTICE ON SECURITY OF FBI BACKGROUND INVESTIGATION FILES

SEPTEMBER 28, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

NINETEENTH REPORT

together with

ADDITIONAL AND MINORITY VIEWS

On September 24, 1996, the Committee on Government Reform and Oversight approved and adopted a report entitled “Investigation into the White House and Department of Justice on Security of FBI Background Files.” The chairman was directed to transmit a copy to the Speaker of the House.

I. EXECUTIVE SUMMARY

A. INTRODUCTION

The committee’s investigation into the unauthorized possession of hundreds of FBI background files by the White House remains in progress. There are many questions that are unanswered; cooperation from the White House and other witnesses has not been full and complete; more witnesses must be interviewed; and, many more documents from earlier committee requests are outstanding. Accordingly, this is an interim report to inform the public as to the status of the investigation in the closing days of the 104th Congress.

1. The conduct of White House officials

The FBI files matter, or “Filegate,” is as serious an issue as the Clinton administration has encountered. The discovery of the unauthorized access to so many FBI background files on so many former White House employees is bad enough. These files contain the most private and personal information on an individual, his spouse and family. The fact that two individuals, Craig Livingstone and Anthony Marceca, with extensive political involvement and checkered pasts were in charge of handling the files is cause for alarm and investigation.

That present and former White House officials have not been forthcoming in revealing who hired the two central characters in this matter is of great concern to the committee. The committee intends to aggressively pursue the answers. Whoever was responsible for bringing them into the White House is ultimately responsible for these actions. Placing the public trust of such sensitive, private files in the hands of two political operatives was a disaster waiting to happen. And, it did.

In general, the FBI files issue shows a lack of respect by the Clinton administration for proper security procedures to protect both the President of the United States and the national security. This is all the more so since the White House ignored recommendations from a Democratic committee chairman of the U.S. Senate to take security precautions in response to reported security irregularities in the first years of the Clinton administration.

The Clinton White House displayed a lack of respect for the privacy and confidentiality of private citizens. The mere fact that individuals lacking in professional skills and discretion were put in charge demonstrates the cavalier approach of the Clinton administration toward sensitive security matters.

During the early revelations of the FBI files investigation, White House officials were quick to blame others rather than take responsibility. This happened even when all the facts were not known. First, it was touted as a routine mistake; then it was blamed on a low-level clerk; then the General Accounting Office; and then, the Secret Service. Each of these explanations was thoroughly discredited.

Some White House officials, through surrogates and unattributed background quotes in the press, continue to blame the Secret Service, even after that theory was soundly debunked. The fact that the White House seeks to avoid responsibility for this matter, and instead passes the buck, ensures that White House accountability for its own actions will be elusive.

Furthermore, the FBI files issue made it more difficult for the FBI and the Secret Service, the two agencies responsible for protecting the President and performing security for the White House, to trust actions of the White House. Prior to the files matter coming to light, these agencies cooperated with the White House under the presumption of a “good faith” relationship. Now, however, both have taken steps to implement more skeptical, arms-length processes for future interaction with White House officials. This unfortunate departure from tradition is yet another result of the growing mistrust of our political leaders in Washington. Undoubtedly, it is a black eye on this White House.

2. *The conduct of the FBI*

The committee also is troubled by another serious issue that re-emerged during the FBI files investigation: the politicization of the FBI. Questions about a cozy relationship between the FBI and the White House surfaced during the committee's investigation into the White House Travel Office firings. At the time, in a statement by FBI Director Louis Freeh said, "I told the President that the FBI must maintain its independence and have no role in politics."¹ These questions raised great concern because the politicization of law enforcement in a democracy is a swift and sure way to trample over the civil liberties of private citizens. Consequently, the FBI Director took steps to reverse these perceptions of coziness. But it did not prevent the hundreds of files from being sent to the White House without question.

In the course of the committee's inquiry into the files matter, this perception resurfaced. The committee uncovered several questionable actions by FBI General Counsel Howard Shapiro that we find inexplicable and inexcusable. His "heads up" to the White House Counsel had the effect of an early warning to the subjects of the committee's and the Independent Counsel's investigations of potentially damaging information. Shapiro's delivery of a politically controversial manuscript, joint editing of a White House letter to Director Freeh, and possession of his own personal White House pass had a similar effect.

This committee witnessed blatant interference in its investigatory proceedings. Mr. Shapiro's justifications for his actions are implausible. The committee is seriously troubled by the interference of Mr. Shapiro in the investigations of this committee, as well as those of the Independent Counsel. Mr. Shapiro himself acknowledged that his "heads up" to the White House was inappropriate. However, his coziness with the White House continues. Even the perception of such a relationship threatens the independence of the FBI. The committee calls upon Mr. Shapiro to tender his resignation from the office of the FBI general counsel.

The act of resignation is necessary, if the Director wishes to restore the arms-length relationship between the FBI and the White House, as well as the public's confidence. Failure by the Director to do so will allow the continued erosion of confidence in law enforcement and in the Director's own independent leadership.

The committee has yet to determine whether colossal incompetence or a sinister motive precipitated these events. We have yet to learn exactly who is Craig Livingstone, who hired him and why. Answers to these questions are necessary to explain the true story of "Filegate."

The committee's investigation has sufficient information to realize the great danger in the White House's unauthorized acquisition of these sensitive FBI files. We know the files were in the hands of political operatives, non-professionals, volunteers, teen-agers in proximity to a photocopier, and individuals without security clearances. We know there was virtually no supervision over this sensitive process. We know that some data was taken from the White House compound to the home of a witness who has now claimed

¹ Report of Fiscal Year 1994; Federal Bureau of Investigations; Louis Freeh, Director.

fifth amendment protection against testifying before Congress. No one yet knows where these files have been or who looked at them. The potential for the abuse of the rights and privacy of hundreds of private citizens remains clear and present.

The committee continues to investigate this case and discover the true story. In the meantime, the committee cannot yet assure the public that a lax attitude toward and disrespect for the privacy and rights of ordinary Americans has not gripped this White House.

B. THE MATTER OF THE FBI FILES

1. *The discovery of the files: Travelgate to Filegate*

Since May 30, 1996, the Committee on Government Reform and Oversight has conducted an intensive investigation into the actions of the White House and the Department of Justice concerning the White House's improper acquisition of hundreds of FBI background investigation files of former Republican officials. The genesis of this revelation of massive invasion of privacy was with the committee's document requests for all previously withheld files on Billy Dale.

On May 30, 1996, the committee discovered that the White House had improperly ordered Billy Dale's FBI background file 7 months after he was fired, when the White House finally produced 1,000 pages of the 3,000 pages of documents that were being withheld under a May 9, 1996 invocation of executive privilege.

The committee issued a January 11, 1996 subpoena which included a request for all records relating to Billy Dale. The documents were due to the committee on January 22, 1996. Prior to the subpoena, the committee had submitted several document requests to the White House which included document requests relating to Mr. Dale.

Prior to May 30, 1996, the White House Counsel had represented in February 1996 that the only categories of documents withheld were: "personnel" records, attorney notes, and "deliberative material" concerning investigations of Congress and the Independent Counsel.

Throughout the spring of 1996, White House Counsel withheld this group of documents. At no time did the White House Counsel make any representations that he was in possession of an FBI background file of Mr. Dale. In fact when Mr. Dale's file was forwarded on May 30, 1996, on the morning a contempt vote was scheduled, it was not even distinctly identified in a production log and was just grouped among documents emanating from "The Counsel's Office." Since the document had been obtained from the Office of Records Management who received it from the Office of Personnel Security, the characterization of the source of the document was misleading.

Yet if the document did come from the "Counsel's Office" as identified by the White House, why does the White House Counsel Jack Quinn claim that he told the committee about the document in February 1996 while Special Counsel Jane Sherburne, who was at the same February 1996 meeting, claims she didn't know about the Billy Dale file until June 4, 1996? The Counsel's Office has provided mutually inconsistent accounts of who knew about the Billy Dale file and when.

It is important to note that the Billy Dale file only was produced after a vote of contempt was taken in the full committee on May 9, 1996. In a meeting with Chairman Clinger shortly before the contempt vote, Quinn informed the chairman that he had not even attempted to collect certain categories of subpoenaed documents and he had not yet undertaken a review of the documents for privilege issues. Quinn issued a blanket “protective” executive privilege claim over the documents on May 9, 1996 at the behest of the President. Personnel records are not normally subject to executive privilege.

“Personnel records” are distinctly different from FBI background reports and are kept in separate and distinct offices at the White House. Certainly the Counsel’s Office, which handles the FBI background reports, is aware of this distinction. After all, the Counsel’s Office reviews FBI background reports and it does not ordinarily review “personnel” records. The White House Counsel’s Office was misleading in how it represented Billy Dale’s file to the committee. While the White House Counsel now tries to revise the history of how they characterized this file, the actions by Counsel staff are representative of the type of gaming that was typical in negotiating document productions.

On May 30, 1996, when Billy Dale’s file was produced to the committee, Chairman Clinger also was notified by letter² that President Clinton was formally asserting executive privilege over the then remaining 2,000 pages of outstanding documents. Quinn claimed that Attorney General Reno reviewed the documents and agreed with the propriety of assertion of executive privilege. Although Quinn represented that this assertion of executive privilege was being made by President Clinton, the committee never was provided any documentation of a personal assertion by President Clinton.

2. The discovery of the Billy Dale file

The privileged resolution was withdrawn from floor consideration at Chairman Clinger’s request in order to review the new documents and determine the propriety of President Clinton’s executive privilege claims over the remaining 2,000 pages of identified responsive documents.

The committee began an immediate review of the 1,000 pages already produced. That day, committee investigative staff discovered a White House memo, dated December 20, 1993, requesting a copy of Billy Dale’s FBI background investigation previous report. The request for Dale’s file was sent to the FBI a full 7 months after Mr. Dale and the White House Travel Office employees had been summarily fired and an FBI investigation announced by the White House.

The request form found among the White House’s document production was in memorandum format addressed “TO: FBI, LIAISON” and “FROM: BERNARD W. NUSSBAUM.”³ The form stated that Mr. Dale’s previous report was being requested because he was currently being considered for “ACCESS (S)” to the White

² Letter from Jack Quinn to Chairman William F. Clinger, Jr., Committee on Government Reform and Oversight, U.S. House of Representatives, May 30, 1996.

³ White House document CGE 43641.

House.⁴ An attached memo indicated that the FBI complied with the request and forwarded the Dale file to the White House on January 6, 1994.⁵

Although the committee had previously issued, on February 7, 1996, a subpoena to the Department of Justice for all records pertaining to Billy Dale, DOJ never produced its copy of the document.

The committee asked Attorney General Reno to provide information on the Justice Department's knowledge of its failure to produce its copy of the Dale file and the White House memo requesting it in December 1993, particularly in light of the fact it was responsive to other Justice Department requests and subpoenas. The Department of Justice responded, stating that the committee had not requested the Dale file. The memo request from Nussbaum's office was not located in its search.

When FBI Unit Chief James Bourke was asked in a committee deposition about DOJ's failure to produce this document, he testified that he had "no idea" why, and that it wasn't his responsibility.⁶ Mr. Bourke later explained that it was the FBI general counsel's responsibility to request document searches in response to congressional subpoenas and he was not aware of any request.⁷

It is clear that White House officials attempted to hide its requisition and possession of the Dale file: first, by erroneously describing it as a personnel file instead of an FBI background file; second, by withholding it under a blanket executive privilege; and third, for failing to list this and other specific documents in its final privilege log.

The committee has yet to find the reason why the White House requested the Dale file from the FBI 7 months after he was fired.

3. *White House's changing explanations for "Filegate"*

In the first few days following the discovery, the White House offered several conflicting explanations about how it obtained hundreds of FBI background files. The White House initially released statements from Craig Livingstone's attorney claiming that the activities of Livingstone and Marceca were all an "innocent mistake." Why did the White House so quickly endorse the explanations of Livingstone and Marceca before getting all the facts?

4. *A "file clerk" caused the problem—June 5, 1996*

White House Special Counsel to the President Jane Sherburne issued a statement on June 5, 1996, claiming that "file clerks" performing a routine recordkeeping effort "may have mistakenly" sought Mr. Dale's FBI background file.⁸ Ms. Sherburne refused to provide the committee with the name of the "file clerk" that sought Dale's file. Unknown to the committee, at the time, Ms. Sherburne met with Livingstone that evening at the White House. Mr. Livingstone claimed to know nothing about this growing "problem" at the

⁴ According to Anthony Marceca's documents produced under subpoena to the committee, (unnumbered) the "(S)" notation referred to the type of access being sought for the individual. An "S" meant that the White House was seeking access for Mr. Dale as White House Staff rather than for an "I" for intern or volunteer position.

⁵ White House document CGE 43642.

⁶ Committee deposition of James Bourke, June 17, 1996, pp. 62–63.

⁷ *Id.*, pp. 65–66.

⁸ Statement by Jane Sherburne, June 5, 1996.

time. Ms. Sherburne testified that Livingstone was “as confused and puzzled by it”⁹ as she was.

5. The General Accounting Office caused the problem—June 6, 1996

By June 6, the White House issued another explanation for the improper possession of the FBI files. The White House stated that a “low-level file clerk” was not in fact at fault; rather, that the General Accounting Office (“GAO”) might have “triggered” a request for these files in the course of its investigation of the White House Travel Office matter. The GAO immediately denied any involvement or request of FBI files.¹⁰

6. “An innocent bureaucratic mistake”—June 7, 1996

The committee soon learned that, in addition to Mr. Dale’s improperly sought FBI file, the White House had obtained at least 338 other FBI files of prior Republican administration officials.¹¹ One of Livingstone’s lawyers, David Cohen, who had been conducting his own investigation, telephoned Sherburne, and gave her the “bad news” that the White House had ordered a lot of other files beyond Dale’s. Ms. Sherburne learned that files on former Republican administration officials were also ordered.¹² White House Counsel and “Travelgate” spokesman Mark Fabiani, immediately labeled this matter “an innocent bureaucratic mistake.”¹³

Fabiani told the Associated Press on June 7, that Livingstone’s attorney’s discovery provides “a completely innocent explanation.”¹⁴ Fabiani also told the New York Times that the “detailee” whom he still refused to identify “was mistakenly given an outdated list of White House employees dating back to the Reagan Administration,” and that “no one in the White House ever reviewed the files.”¹⁵ Further, Fabiani informed the Associated Press that the ordering of numerous other files was proof positive “that Mr. Dale’s file was not singled out.”¹⁶ Chairman Clinger sent a letter to the White House on June 7 requesting all official information on this matter, including the name of the “mystery” detailee.

7. The Secret Service caused the problem—June 10

In a June 10, 1996 letter, Sherburne stated that the FBI background files were assembled in the White House Office of Personnel Security “as a result of a mistaken understanding” that these prior Republican administration officials “continued to have access to the White House compound after the start of the Clinton Admin-

⁹ Sherburne deposition, p. 73.

¹⁰ The GAO spokesperson stated that it “never asked presidential aides for the FBI background file of fired Travel Office director Billy Dale” and generally disclaimed that the GAO ever asked for or was allowed to review any FBI background files. Pete Yost, *White House Struggles to Explain Why it Obtained Dale’s FBI File*, Associated Press, June 6, 1996.

¹¹ Jane Sherburne later testified that the White House learned of this information on June 6, 1996, through Mr. Livingstone’s lawyers, Randy Turk and David Cohen of the Washington law firm of Miller Cassidy, LaRocca & Lewin. Sherburne deposition, July 23, 1996, pp. 74–75.

¹² Sherburne deposition, p. 85.

¹³ Pete Yost, *Dale FBI File Part of Larger Effort to Recreate White House Files*, Associated Press, June 7, 1996.

¹⁴ *Id.*

¹⁵ Neil E. Lewis, *White House Says Requests for FBI Files Was Wider*, New York Times, June 8, 1996.

¹⁶ Pete Yost, *Baker, Fitzwater, Brady Among 330 FBI Files White House Got*, Associated Press, June 7, 1996.

istration.”¹⁷ Ms. Sherburne attached to her letter a sworn statement of Anthony Marceca, the detailee who ordered the files. Marceca stated that he based his requests to the FBI on Secret Service lists of White House passholders. Contrary to Fabiani’s statements to the New York Times that “no one in the White House ever reviewed the files,”¹⁸ Mr. Marceca revealed in his statement that he, in fact, did examine the contents for inconsistencies. Marceca told Livingstone’s lawyer that he, in fact, read all of the files in order to pass on any “derogatory information” to Livingstone.¹⁹ Sherburne later explained that Livingstone’s lawyer met with Mr. Marceca on Sunday, June 9 at his law firm’s offices. Mr. Marceca dictated a statement to Livingstone’s attorney in the presence of Livingstone.²⁰

The frequently changing explanations in the early days show that the White House was quick to avoid accountability by passing the blame. It engaged in a public strategy of excuse-making. However, each time the blame was shifted elsewhere, the explanation was discredited. The White House continued to cling desperately to the explanation of blaming the Secret Service, even though it, too, was debunked in the committee hearing with the Secret Service. In the final analysis, the White House must take full responsibility for this fiasco and stop trying to lay blame elsewhere.

It is unconscionable that the White House shifted the blame from its own incompetent appointees to those of the U.S. Secret Service. The White House mounted a stealth campaign consisting mainly of background statements attributed to unidentified sources, to blame the Secret Service. The Secret Service initially refrained from defending itself, following its tradition of not making public statements about White House matters. Eventually, Secret Service witnesses were summoned before the committee to explain the charges leveled against them. Their testimony, and their extensive audit of the White House’s systems, showed that no single “faulty” Secret Service list could provide justification for how Anthony Marceca obtained hundreds of FBI background files of former Reagan and Bush officials.

The *only* list from which Marceca could have obtained all of the names released by the White House to date, is a master E-Pass list, which lists all “A,” active and “I,” inactive passholders for approximately the past 8 years. Mr. Marceca testified that he thought the “I” next to the name on the list indicated an individual was an intern.²¹ Mr. Marceca would have had to deliberately order the files of people identified as “inactive” in order to have utilized this list. Mr. Marceca would have us believe that he ordered the FBI background files of such notable figures as Ken Duberstein, A.B.

¹⁷ See June 10, 1996 Special Counsel to the President Jane Sherburne, letter to Chairman Clinger, p. 1.

¹⁸ Neil E. Lewis, *White House Says Request for F.B.I. Files Was Wider*, New York Times, June 8, 1996.

¹⁹ John F. Harris, *White House Admits Having Background Files*, Washington Post, June 8, 1996.

²⁰ Mr. Marceca stated in his sworn deposition that he met Craig Livingstone earlier that day at a local flea market and they went to Craig Livingstone’s house nearby. After Mr. Livingstone telephoned his lawyer, they both went to his lawyer’s offices where Mr. Marceca was questioned and delivered a sworn statement. Marceca deposition, p. 114.

We do not know why Mr. Marceca’s attorney was not present or when his attorney received the copy of the sworn statement that was handed to the White House the following day.

²¹ Marceca deposition, p. 152.

Culvahouse and Tony Blankley, without any recognition of the names, or that they were not “holdover interns.” The committee is especially skeptical of this conclusion given Marceca’s vast political experience.

8. *Procedural safeguards against “innocent snafus”*

In an attempt to get to the bottom of the cause of the FBI files issue, the committee held its first hearing on June 19, 1996. In that hearing, we learned how the very sensitive matters of confidential background checks and security clearances were handled by prior White Houses, both Democrat and Republican.²² In the past, the President has appointed only professional, circumspect and highly responsible people to be put in charge of these most sensitive matters.

In this hearing, former Counsels to the President and Livingstone’s predecessor in the White House Office of Personnel Security testified to the careful, and painstaking process that was followed in order to ensure the confidentiality of these sensitive files. We learned that this function was never handed over to political operatives, or detailees from outside agencies, and certainly not to teen and college age interns lacking security clearances, such as occurred in the Clinton White House.²³

We further learned that for the past 30 years, the White House has engaged in a careful process of performing background checks and granting or rejecting security clearances on individuals to determine their suitability and stability for working at the White House and throughout the executive branch. The clearance and background processes exist to protect the President as well as the national security. The case of convicted spy Aldrich Ames is a painful reminder of the kind of problem that can arise when vigilance in national security matters is lacking. Given the necessity of sound procedures to guard against breaches of security, those who oversee security procedures themselves must be carefully selected and always above reproach.

Nancy Gemmell, former staff assistant in the Security Office since 1981, testified that at the beginning of the Clinton administration Livingstone had numerous teenage interns working inside the security office and even in the vault. The interns did not have background investigations, security clearances, or proper supervision. They had access to all confidential FBI background files and a photocopier machine stood nearby.

It is clear that supervision and accountability are imperative to such a sensitive process. As Washington Post editorial chief Meg Greenfield pointed out, “[E]ven if the accident rationale holds up, it was a plenty serious and inexcusable accident. Neither that material nor that responsibility should ever have been placed in those hands.”²⁴

It is troubling, both to the Congress and the public, to think the President could allow such inappropriate staff to oversee security matters in such a careless fashion. A brief review of the Clinton ad-

²² *Security of the FBI Files: Hearing before House Committee on Government Reform and Oversight*, 104th Cong., 2d Sess., June 19, 1996.

²³ *Id.*

²⁴ Meg Greenfield, *The White House Wants*, Washington Post, June 24, 1996.

ministration's history of handling security issues shows other evidence of irresponsibility.

In March 1994 the problems and delays in obtaining White House passes and security clearances came to light, when congressional inquiries delved into why hundreds of White House staffers did not yet have background investigations completed. Associate Counsel William Kennedy was assigned responsibility for overseeing security matters, including the issuance of passes and security clearances. Kennedy was subsequently relieved of his responsibilities in this area; yet Livingstone, who was directly in charge of managing security, was not.

Later, in August 1994, Senator Dennis DeConcini, then Democratic chairman of the Subcommittee on Treasury, Postal Service, and General Government of the Committee on Appropriations, which provides funding for the White House, concluded an investigation of reported problems in Livingstone's office. Chairman DeConcini wrote to the President²⁵ suggesting specific changes that were sorely needed in the Personnel Security office. Those changes included replacing Livingstone with a career professional who had a security background. Chairman DeConcini's recommendations were considered but not implemented by the White House, and for some reason, Livingstone remained in charge.²⁶

It is clear that security procedures are only as effective as the professionals who manage them. Following the committee's first hearing, two points became evident. First, there were serious security problems at the Clinton White House; second, those responsible for White House security under the Clinton administration were hardly professional and were a stark departure from past administrations.

9. *Livingstone and Marceca*

Among the foremost questions the committee sought to investigate regarding how and why the White House obtained these FBI background files, was, "Who is Craig Livingstone?" "Who recommended him?" "Who hired him?" and given his background, "Why was he put in charge of such a sensitive job at the White House?" These are seemingly simple questions, but complete answers to them are still not forthcoming.

Livingstone did not have the professional background necessary to perform the sensitive functions of the Personnel Security Office. Yet he was put in charge of that office, and then managed to remain in that role despite the frequent turnover of White House Counsels. Conventional wisdom would suggest that management turnovers bring staff reorganizations. Instead, over a 3-year period, he enjoyed a 40 percent salary increase by touting his record as a

²⁵ Letter from Chairman DeConcini to President Clinton, August 11, 1994.

²⁶ Hearing testimony also illuminated other complaints against Livingstone during his tenure at the White House. Specifically, Livingstone was reprimanded by Evelyn Lieberman, Assistant to the Chief of Staff for the First Lady, for discussing the details of a background investigation with a young female staffer. It is not clear why the First Lady's staff was in the chain of command to reprimand Craig Livingstone, who reported to the Counsel's Office. Livingstone also had a police report filed against him in November 1993, when he threatened a female neighbor because her dog was barking. Livingstone reportedly said he would "beat her face in" if she did not quiet her dog. Livingstone admitted to the police officer that he did make the threat. *Security of the FBI Files: Hearing before the Committee on Government Reform and Oversight*, 104th Cong., 2d Sess., June 26, 1996.

“team player”²⁷ while keeping bankers’ hours.²⁸ Numerous questions still remain about who brought Craig Livingstone into the Clinton inner circle as security chief. The committee has yet to piece together a clear picture of who is responsible for Livingstone working in the White House after the inauguration. Given the information available, did former White House Counsels Bernard Nussbaum, Lloyd Cutler, Abner Mikva and present Counsel to the President Jack Quinn really believe that the political advance man and ex-bouncer was the best individual for this sensitive position?

Mr. Nussbaum testified before this committee that he does not know who hired Livingstone. Instead, he suggested that the Chief of Staff’s office may have been involved.²⁹ Mr. Livingstone’s supervisor, Rose law firm partner William Kennedy, said in all committee depositions, as well as hearings, that he could shed little light on who brought Livingstone into the White House. Mr. Livingstone testified to the committee he does not know who recommended him. He gave an arguably tortured explanation of his journey into the White House as a permanent employee. Those who previously heaped high praise on Livingstone, such as the President’s senior advisor George Stephanopoulos, virtually denied knowing him to the press. President and Mrs. Clinton’s denials of hiring, or participating in the hiring of Craig Livingstone is in direct conflict with statements from their own senior staff to career FBI agents.

Both Livingstone and Marceca had extensive histories as campaign advance men and political operatives. Marceca was hand-picked by Livingstone for his White House detail through his personal request for Marceca to then-Associate Counsel Kennedy. Sworn testimony by Dennis Casey, a former Gary Hart campaign consultant who worked with Livingstone and Marceca on the campaign in 1984, shed some light on their possible motives for gathering information on Republican officials and fired Travel Office workers. Casey testified that both Livingstone and Marceca in the past had endorsed the utilization of personal information to manipulate support for their political candidate.

Documents show that Livingstone worked in “counter-events operations” during the 1992 Clinton-Gore campaign, and deployed partisan “tricks” to disrupt Former President Bush’s campaign for re-election.³⁰ Livingstone’s police record shows a report filed against him during his tenure in the White House where he was alleged to have physically threatened a female neighbor. Annoyed at her barking dog, Livingstone threatened to “beat her face in.”³¹ The Officer who questioned Livingstone reported that he admitted to making the threat. Mr. Marceca has had his own brushes with the law in previous jobs in Texas and Pennsylvania.

In the committee’s second hearing, we learned that Marceca left the White House compound with computer disks, which included details of the confidential files of National Security Council staffers

²⁷ See letter from Livingstone to then-Counsel to the President Abner Mikva, “It would be wrong not to approve my request . . . I apologize for my tone, but this is my last try to remain part of the team.” August 28, 1995, White House document, CGE 48058.

²⁸ White House documents, CGE 47858–47860. Times of Livingstone’s entry and exit White House complex.

²⁹ Committee deposition of Bernard Nussbaum, July 11, 1996, p. 21.

³⁰ Resume of David Craig Livingstone, White House document DGE 46320–46234.

³¹ Montgomery County, MD Department of Police, Event Report, Report of Simple Assault, November 7, 1993.

and other White House employees.³² Documents produced by Marceca also indicated that his duties in the White House encompassed more than just filling out forms. Marceca's memoranda to Livingstone included analyses of the backgrounds of individuals who could not pass muster on security issues.³³ Mr. Marceca appeared to be providing legal advice to facilitate the "cleansing" of background problems. Although Marceca's detail at the White House was not renewed after his background investigation exposed some problems, he continued frequent entry both as a volunteer and as a visitor with access until June 1996. Documents produced by the White House suggest that Marceca played a larger role in White House security matters than the Clinton administration has admitted to the public.

Further, in late 1993 and 1994, Livingstone was attempting to obtain a Presidential appointment for Marceca, either as an Inspector General or a U.S. Marshal. Even after Marceca's background investigation, completed in December 1993, exposed suitability problems, attempts to employ Marceca continued. When that endeavor failed, Livingstone again tried to detail Marceca to the Personnel Security office, contrary to Associate Counsel Kennedy's testimony that he thought Marceca should just "go back to where he was."³⁴ Strangely, on March 17, 1994, it appears Livingstone withdrew his request to Secretary of Defense Perry for Marceca's detail.³⁵

However, that was not the end of Marceca's work for the White House. Phone messages Marceca left for Livingstone and other documents show that Marceca was employed by the White House on a number of advance trips for President Clinton and other officials. One message from Marceca stated that he had just returned from a trip with Secretary Perry, and wanted to talk to Livingstone about what he had observed. Another message asked if Livingstone wanted to "be an agent working for Tony."³⁶ Why were individuals with questionable backgrounds travelling with the President? Was Marceca asked to make observations of his trip with Secretary Perry? What information was he sharing with Livingstone? Such documents raise serious questions about the White House's discretion in employing individuals with highly questionable backgrounds for important security positions.

In addition to the dubious backgrounds of Livingstone and Marceca, their various sworn statements about the requisitioning of the files appear inconsistent both within and between their own statements. Additionally, their statements conflict with sworn testimony provided by the FBI, the Secret Service and a former veteran employee of the Security Office, Nancy Gemmell. Furthermore, since Marceca's appearance at the committee hearing on June 26, 1996, he has refused to provide further testimony to the House of Representatives or the Senate, pleading his fifth amendment right

³² *Security of the FBI Files: Hearing before the Committee on Government Reform and Oversight*, 104th Cong., 2d Sess., June 26, 1996.

³³ Memorandum from Marceca to Livingstone, undated, Marceca document Bates Stamp No. 117.

³⁴ Kennedy deposition, June 18, 1996, p. 41.

³⁵ Letter from Livingstone to Secretary Perry, March 17, 1994, White House document CGE 55749.

³⁶ White House document DBI 54256.

against self incrimination. Livingstone was kept on in his position as director even after the files matter was uncovered, and was not placed on administrative leave until he personally made the request on June 17, 1996.³⁷ Mr. Livingstone resigned at a hearing before this committee on June 26, 1996.³⁸

10. Secret Service hearings

The Secret Service provided numerous briefings to members of House and Senate committees and testified at two hearings on this matter. At the Government Reform and Oversight hearing, it was finally resolved that no possible conglomeration of Secret Service lists could have documented what is now believed to be more than 400 individuals as active passholders.

Whatever the reason for the White House's assorted and conflicting explanations, it became clear that the Secret Service was not at fault as evidenced by Livingstone's own statement to Special Agent Cole on June 7, 1996 when he said, "We just wanted you guys to know that we weren't blaming the Secret Service. Using an old list was our fault, and we had the current stuff you guys gave us. I don't know what happened."³⁹

The Secret Service spent an extraordinary amount of time and resources carefully reviewing the quality of the information it provided to the White House. Countless hours were dedicated to examining if any material it provided to the White House could have been responsible for the hundreds of improperly requested FBI background files. In the end, the Secret Service could not identify any systemic problems which would explain how this happened.

11. FBI internal investigation and report

Director Freeh issued a June 5, 1996 press release denying that he had any prior knowledge of the White House's request for Billy Dale's file and announcing that he had tasked the FBI general counsel, Howard Shapiro to conduct an investigation into the matter and report his findings to Independent Counsel Kenneth W. Starr, who had become involved on June 6, 1996, because of links to his Travel Office investigation.⁴⁰

Director Freeh explained that any contacts between the White House and the FBI were governed by the Justice Department's July 3, 1993, post-Travel Office firing policies⁴¹ and the Attorney General's November 15, 1994 policy regarding White House contacts. Director Freeh assured the public that these policies "are adhered to scrupulously."⁴²

An official at FBI headquarters informed the press that Director Freeh intended "to make sure that the public's perception is that there's not some cozy relationship between the White House and

³⁷ See June 20, 1996 letter from Jack Quinn to Chairman Clinger, p. 2.

³⁸ *Security of FBI Background Files* hearings, June 26, 1996.

³⁹ Cole deposition, p. 37.

⁴⁰ Notification to the court pursuant to 28 U.S.C. § 592 (a)(1) of the initiation of a preliminary investigation and application to the court pursuant to 28 U.S.C. § 593 (c)(1) for the expansion of the jurisdiction of an Independent Counsel.

⁴¹ Memorandum to John Collingwood, Inspector in Charge, Office of Public and Congressional Affairs, FBI, from Carl Stern, Director of Public Affairs; subject: contact with the White House and other executive branch agencies; June 13, 1993.

⁴² June 5, 1996 Justice Department FBI immediate release.

bureau executives.” Another FBI agent added that Director Freeh “certainly doesn’t want the bureau mixed up in this stuff.”⁴³

On June 13, 1996, the FBI revealed that an additional 71 files of prior Republican administration officials had been requested by and delivered to the White House by the FBI.

On June 14, 1996, the FBI issued its “Report on the Dissemination of FBI File Information to the White House,” revealing that 408 files were sought by and delivered to the White House “without justification.” Director Freeh noted that “the prior system of providing files to the White House relied on good faith and honor” of White House employees and that “unfortunately, the FBI and I were victimized.” Director Freeh noted, “Among the unquestionably unjustified acquisitions were reports relating to discharged Travel Office employees Billy Ray Dale and Barnaby Brasseux.” Director Freeh also acknowledged that these were “egregious violations of privacy.” Director Freeh promised the American people that “it will not happen again on my watch.”⁴⁴

As FBI Director Freeh stated in his report, the process has always relied on the “good faith and honor” of those involved.⁴⁵ There are inherent risks involved when, instead of “good faith and honor,” political operatives, and inexperienced teenagers are put in charge of this highly sensitive process.

12. Attorney General Reno refers FBI files investigation to Judge Starr

Independent Counsel Kenneth Starr announced on June 18, 1996, that he did not believe his office had authority to pursue the investigation of the files matter without a request from the Attorney General to expand the scope of his authority. In response, Attorney General Reno announced that day that FBI Director Freeh would be asked to conduct a thorough investigation into the matter. Following this announcement, the White House wrote to Chairman Clinger promising to provide full cooperation with the FBI’s investigation and announcing changes being instituted in the White House concerning its procedures to obtain and review FBI background investigation files.⁴⁶ Subsequently, on June 20, 1996, Attorney General Reno filed a motion with the District of Columbia Federal Circuit Court requesting an expansion of Judge Starr’s investigative authority so that he could pursue this improper use of FBI background files. The order was signed on June 21, 1996.⁴⁷

⁴³ Wesley Pruden, *The Limited Hangout at the White House*, Washington Times, June 7, 1996, p. A4.

⁴⁴ Report of the FBI general counsel on the dissemination of FBI file information to the White House, June 14, 1996.

⁴⁵ *Id.*

⁴⁶ FBI General Counsel Howard Shapiro stated that he did meet with Independent Counsel Starr’s office during this short period where he had authority to investigate this matter. Although Mr. Shapiro did not provide the details of this briefing, the Independent Counsel provided highly confidential background information to Mr. Shapiro on the status of its investigation at that time. It is unclear whether Mr. Shapiro in turn relayed this information to the White House as an “interested party” or to the Justice Department.

⁴⁷ Notification to the court pursuant to 28 U.S.C. § 592 (a)(1) of the initiation of a preliminary investigation and application to the court pursuant to 28 U.S.C. § 593 (c)(1) for the expansion of the jurisdiction of an Independent Counsel.

13. *Improper contacts with the FBI*

The committee's investigation continued. Among the many questions, which the committee sought to answer, was the hiring of Craig Livingstone. Thus, at the request of FBI Director Freeh, Chairman Clinger, on July 18, 1996, went to Bureau Headquarters to review Livingstone's FBI background file. Contained in the file was a 1993 agent interview of Bernard Nussbaum wherein Nussbaum is recorded as telling Agent Sculimbrenne that Craig Livingstone had come "highly recommended by Hillary Clinton." The statement is in direct conflict with sworn statements made by Nussbaum in a June 26, 1996 committee hearing. In the hearing, Nussbaum stated that he did not know who brought Livingstone into the White House for the position in the security office. He also stated that he never spoke to the First Lady about Livingstone.⁴⁸

Prior to the chairman's review of Livingstone's FBI background file, FBI General Counsel Howard Shapiro provided the White House with a "heads up" about the highly pertinent information related to Mrs. Clinton's involvement in recommending Livingstone. The committee is greatly troubled by the fact that Shapiro provided advance notice of this information to the White House. The FBI has yet to identify any legitimate purpose in Shapiro's actions. The FBI failed to contact the Independent Counsel, which had clear jurisdiction over this matter. Mr. Shapiro's specious argument is that "the Bureau had a responsibility to advise affected parties."⁴⁹ Mr. Shapiro ignored the Attorney General's admonition that any FBI involvement would create a "political conflict of interest." Mr. Shapiro's actions potentially damaged both the committee's and the Independent Counsel's investigations, while exacerbating the already growing perception of politicization of the FBI.

Subsequent to the revelation of the Nussbaum interview, Shapiro dispatched two senior FBI supervisory agents to now-retired Agent Dennis Sculimbrenne's home to formally interview him about the Nussbaum statement. Agent Sculimbrenne got the impression that the White House was unhappy about his interview report on Bernie Nussbaum. The sending of agents to Sculimbrenne's home involved Shapiro in an operational matter, which is inappropriate for the general counsel.

Further conflicts uncovered in Shapiro's testimony before this committee include his hand delivery of former FBI agent Gary Aldrich's book, "Unlimited Access," to White House Counsel Jack Quinn in February 1996.⁵⁰ The book was in pre-publication form and in the possession of the FBI solely for its review. Shapiro testified that in giving a copy to the White House he was notifying them of possible security risks posed by information revealed in the book. However, the White House has yet to produce a complete response to the committee on this matter.

Shapiro's frequent contacts with the White House is evidenced by the fact that he is the first FBI general counsel in over a decade to have a permanent White House pass, as well as his assistance to White House Counsel Quinn in drafting a letter to Director

⁴⁸ *Security of FBI Files* hearings, June 26, 1996, p. 57.

⁴⁹ Letter from FBI General Counsel Howard Shapiro to Chairman Clinger, July 19, 1996.

⁵⁰ *Security of FBI Files* hearing, August 1, 1996, p. 33.

Freeh. Incredibly, Shapiro offered his advice on the letter, which attacked both the FBI and Chairman Clinger.

In light of Attorney General Reno's determination that the FBI and the Justice Department refrain from investigating anything related to the White House's acquisition of FBI background files, the committee finds Shapiro's interference in the matter clearly and totally inappropriate. Mr. Shapiro's contacts with the White House appear to be in direct conflict with his position as general counsel of the FBI and suggest a far too cozy relationship between the White House and the FBI.

C. FINDINGS

The committee, while investigating the matter of the security of FBI background files has made the following findings:

- FBI Background files often include the most sensitive and confidential personal and financial information about the individual being reviewed.
- The White House improperly requested hundreds of confidential FBI background files seemingly without any justification. This was a violation of the constitutional rights and private lives of many upstanding citizens, whose files were requisitioned and reviewed by White House employees. Many of the individuals were political appointees of the Reagan and Bush administrations. This leads to the possibility that the Clinton administration was attempting to prepare a political "hit list" or "enemies list" with the most sensitive and private information possible.
- The White House Office of Personnel Security and the FBI maintained a system of mutual convenience which allowed low level staff to access any file without question by the FBI. The Clinton administration has, on a number of occasions, failed to implement safeguards that would have prevented this lapse in security. Further, the longstanding policy of the FBI, which relied on the honor of White house employees, was exploited by Clinton administration employees.
- FBI General Counsel Howard Shapiro provided confidential FBI law enforcement information about Mrs. Clinton's role in bringing Livingstone to the White House. When Shapiro realized that the information contained in Livingstone's FBI background file could damage Nussbaum and Mrs. Clinton, he immediately contacted the Office of White House Counsel and read verbatim the incriminating contents of Livingstone's file.
- Once White House Counsel Jane Sherburne learned that the information contained in Livingstone's file could damage Nussbaum and Mrs. Clinton, Sherburne contacted Mrs. Clinton regarding the incriminating information.
- Sherburne possibly violated ethical standards by informing private attorneys for Bernard Nussbaum and Craig Livingstone about confidential FBI law enforcement information. On the day before reports of his testimony before a grand jury, lawyers for Nussbaum were told about evidence uncovered in a search of Livingstone's file that contradicted Nussbaum's testimony before the Committee on Government Reform and Oversight. Mr. Livingstone received the same information.

- White House Office of Personnel Security staff failed to properly secure confidential FBI law enforcement files. The committee was provided with testimony and evidence that staff and interns without the necessary clearances had unfettered access to the highly sensitive material in the FBI background files including that of more than 400 former Bush and Reagan administration officials.
- The FBI continued to involve itself in the investigation of the FBI files matter after receiving notice from the Attorney General that a conflict of interest existed between the FBI and the White House concerning this matter. Mr. Shapiro notified the White House about the incriminating contents of Livingstone's background file before the committee was allowed to review it. Shapiro assisted with correspondence between the White House and the FBI regarding the FBI files matter and the investigation by the Committee on Government Reform and Oversight.
- Army Detainee Anthony Marceca was given unfettered access to confidential FBI law enforcement files and allowed to remove confidential information from the White House, despite his own inability to receive White House clearance. Marceca's removal of information in those files from the White House was inappropriate.
- FBI General Counsel Howard Shapiro provided the White House Counsel a pre-publication copy of Gary Aldrich's book, thus allowing distribution of the book to the President's political damage control operation. Mr. Shapiro improperly allowed the White House access to a manuscript provided to the FBI under an employment agreement with a former agent without any valid basis for doing so.
- The White House withheld from Congress responsive subpoenaed documents that further implicated individuals under criminal investigation. The White House began the release of disputed documents only under threat of contempt.
- The White House asserted executive privilege over documents that had no nexus to the President or his need to communicate with his staff concerning issues involving the Presidency or national security. Many of the documents received by the committee, over which the President made an executive privilege claim, contained routine administrative information or communications on issues having no bearing on issues of national security.

D. RECOMMENDATIONS

The committee has undertaken a preliminary investigation into the improper release of FBI background files to the White House. This interim report is the result of that investigation. Hearings, depositions, and document review have produced additional questions still under review. The committee is not satisfied that the public has the answers to many of these concerns. It would therefore be imprudent to make recommendations on a set of incomplete facts. The only exception concerns Mr. Shapiro's activities. Even though a complete review of Shapiro's activities has not been completed, it is clear from the evidence available to the committee that

Shapiro's actions were grossly inappropriate and that he should, therefore, resign.

This committee owes it to the individuals whose files were improperly obtained by the White House to continue a thorough investigation of these circumstances to find out what happened to their most private information.

The committee suggests a broad scope for the subsequent stages of this important investigation. It, therefore, puts forward a set of questions for the further consideration of the committee.

1. Who hired Craig Livingstone?
2. What list was used to make up the White House requests for FBI background files?
3. Who reviewed the contents of FBI background files for Reagan and Bush administration officials?
4. Were the contents of the FBI background files ever transmitted electronically to any computer database in or outside the White House complex?
5. What effect do new procedures have on the White House pass process and FBI background checks?
7. What standard procedures are in place to ensure that those without the proper clearances do not have access to material protected by the Privacy Act, which are stored in the White House?
8. What policies should be implemented to ensure that FBI officials do not interfere with ongoing investigations outside the Bureau's jurisdiction?

II. WHITE HOUSE OFFICE OF PERSONNEL SECURITY

A. HISTORY OF THE OFFICE OF PERSONNEL SECURITY

The White House conducts some level of background check on every individual requesting access to the complex and on every individual who is being considered for a Presidential appointment. There are several ways in which this background check can be conducted, ranging from a name check to a full field background investigation. Historically, the White House Counsel has been responsible for reviewing the FBI background reports of individuals for suitability purposes. To assist the Counsel in processing the background reviews, the Johnson administration created the White House Security Office.⁵¹ The head of the office, holding the title of Assistant to the White House Counsel for Security, reported directly to the White House Counsel or Deputy White House Counsel.⁵²

From its origination up to the Clinton administration, the White House Security Office was responsible for coordinating paperwork to ensure that all of the forms that appointees were required to complete before an FBI background investigation could be initiated were in order. In addition, the office organized and maintained the background files and reports which were sent to the White House from the FBI. The Director of the Security Office was responsible for the initial review of the FBI background reports for any information which should be brought to the attention of the White

⁵¹ Prepared written statement of C. Boyden Gray, Counsel to President George Bush, p. 2, in committee files.

⁵² *Id.*

House Counsel or his deputy.⁵³ This position was described by a former White House Counsel as “a largely thankless job, requiring long hours, superb organizational skills, attention to detail, and total discretion.”⁵⁴

Beginning in 1972, during the Nixon administration, Jane Dannenhauer was appointed as the Assistant to the Counsel to the President with the responsibility of directing the White House Security Office.⁵⁵ Ms. Dannenhauer served in her capacity as Assistant to the Counsel during the Nixon, Ford, Reagan and Bush administrations, as well as the first 2½ months of the Carter administration.⁵⁶ Ms. Dannenhauer reported directly to either the White House Counsel or Deputy White House Counsel, and was the only person in the Security Office authorized to review the FBI background files.⁵⁷

Previous White House Counsels testified to this committee that in each administration in which they served, the background investigation process was limited to a very small number of high level individuals. Those individuals included the White House Counsel to the President, the Deputy White House Counsel and the Assistant to the Counsel for Security. In a small number of instances, aspects of a particular FBI background report would have been discussed with a senior-level staff member on a need to know basis, without sharing the file.⁵⁸ “Background files were never shown to others in the White House, including the President, the Vice President, the chief of staff or the director of presidential personnel,” according to Richard A. Hauser, Deputy Counsel to President Reagan.⁵⁹

1. White House Security Office practice and procedures

When a new administration takes office it must complete background investigations on all new appointees and employees with White House access. In the past, a new administration began the process during the transition. It is important to complete this process in a timely manner to insure the security of both the President and vast amount of sensitive national security information contained within the White House. This process began with what is called a “name check.”⁶⁰ To complete a name check an individual’s name and Social Security number are sent to the FBI where it is checked against various databases to see if there was any recent potentially illegal activity in the public record.⁶¹

When the FBI receives the name check request, it disseminates the request to several internal units. These units check four different computer databases and the FBI central indices. The databases provide information on criminal histories, arrest records, outstanding warrants, as well as information on organized crime,

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Security of FBI Files* hearing, June 19, 1996, p. 38.

⁵⁶ *Security of FBI Background Files* hearing, June 19, 1996, p. 38.

⁵⁷ Prepared written statement of C. Boyden Gray, Counsel to President George Bush, pp. 11–12.

⁵⁸ *Security of FBI Background Files* hearing, June 19, 1996, pp. 23–26.

⁵⁹ *Security of FBI Background Files* hearing, June 19, 1996, p. 26.

⁶⁰ Prepared written statement of C. Boyden Gray, p. 3.

⁶¹ *Security of FBI Files* hearing, June 19, 1996, p. 20.

terrorism, and foreign counterintelligence.⁶² In addition, a name check request requires the FBI to look to see whether a “copy of a previous report” is on file for the individual. An FBI research analyst then reviews the summary memoranda contained in an individual’s file to determine which reports to forward to the White House.⁶³ All of the information is then sent to the White House. In previous administrations, once an individual was cleared through the name check process, he was eligible for temporary access to the White House pending a full field FBI background investigation.⁶⁴

Any individual seeking repeated or permanent access to the White House and all Presidential appointees were required to go through a full field background investigation.⁶⁵ The FBI full field background investigations were necessary in order to review the background of individuals at the White House for security reasons and also for the President to make a suitability determination.

To begin this process, the individual is required to fill out a “Standard Form 86,” (SF-86) which provides personal data on the individual and authorizes the FBI to conduct the background investigation. As with the FBI background investigations, previous administrations only permitted the Director of the Security Office, the White House Counsel and Deputy White House Counsel to review the SF-86’s.⁶⁶ In previous administrations, the bulk of the background investigations should normally be processed and reviewed during the first 6 months of the administration.⁶⁷

2. *Updating the background files*

When an administration leaves the White House it is required to archive all of its papers pursuant to the Presidential Records Act.⁶⁸ Among the records required by this act to be archived are the FBI background files of all of the administration’s appointees and employees. These FBI files are archived and placed under seal in the Presidential Library for 20 years. When the incoming administration arrives, it must recreate the files for those “holdover” employees who would be continuing their employment at the White House. The task of recreating the files fell to the White House Security Office.

In prior administrations, the Security Office only began the process of recreating the holdover employees’ files after all of the paperwork on the new appointments had been completed.⁶⁹ The rationale for requesting these files after all the new employee paperwork had been completed was twofold. First, the holdover employees had

⁶² Report of the FBI general counsel on the dissemination of FBI file information to the White House, June 14, 1996, p. 19.

⁶³ *Id.*, p. 20.

⁶⁴ Prepared written statement of C. Boyden Gray, p. 3.

⁶⁵ *Id.*

⁶⁶ *Security of FBI Files* hearing, June 19, 1996, p. 46. (A.B. Culvahouse, Counsel to President Reagan, testified that out of 12 lawyers in the White House Counsel’s Office, only 2 others were authorized to review the forms. The Deputy White House Counsel and a designated Counsel’s Office attorney was authorized to look at judicial forms.)

⁶⁷ Former Counsel to President Bush, C. Boyden Gray stated, “The inevitable backlog that results from so many investigations being requested at once requires the Security Office staff to spend 12–14 hour days just to manage the paper flow.” Prepared written statement of C. Boyden Gray, p. 4.

⁶⁸ 44 U.S.C. §§ 2201–2207.

⁶⁹ Prepared written statement of C. Boyden Gray, p. 7.

already been cleared for access by a previous administration.⁷⁰ And second, by the time the paperwork had been processed on the new employees, the list of White House employees would be more current. It was necessary to obtain the FBI reports in order to update the background investigations of the holdover employees, who, along with all other White House pass holders, needed an update of their background investigation every 4 years.⁷¹ Every new administration begins with the same information and every new administration has had to recreate the files of the permanent White House employees.

The procedure which each previous administration⁷² followed to update its background files essentially consisted of four steps:

- (1) the Security Office would obtain from the Secret Service and verify a current list of pass holders with access to the White House complex;
- (2) the office would request from the FBI copies of the previous background reports concerning those on the list;
- (3) the head of the office would review the prior reports to ascertain the date of the last background check, and to bring any derogatory information to the attention of the White House counsel; and
- (4) the Security Office would send a new SF-86 to be completed by employees as they came due for an update investigation.⁷³

Although the Security Office would rely on the Secret Service lists for current and accurate information in its lists of individuals that still had access to the White House, it was normal practice to cross reference and double check the lists.⁷⁴ It is solely the responsibility of the White House Security Office to inform the Secret Service that an individual should be taken off the access lists and listed as “inactive” to ensure that only present employees remain on the “active” Secret Service lists.⁷⁵

In the first year of a new administration, the Security Office would proceed with its updates on an office by office basis to determine who the holdover employees were that needed to have their files recreated.⁷⁶ The Security Office would fill out a standard request form ordering a copy of the previous FBI report of the holdover employee. When the previous report was received in the Security Office, the Director of the office would personally review the file to determine and make a notation of the date when that the individual was due for a background investigation update.⁷⁷ That individual’s name would then be added to the list, organized on a monthly basis, of individuals coming due for an update of their FBI background report.⁷⁸ The Director of the office would also review

⁷⁰*Id.*, p. 6.

⁷¹ Prepared written statement of Jane Dannenhauer, p. 1 (in committee files).

⁷² Each administration since the Nixon administration has followed this procedure.

⁷³ Prepared written statement of C. Boyden Gray, p. 7.

⁷⁴*Id.*, p. 8; *Security of FBI Background Files* June 19, 1996, p. 50.

⁷⁵ *Security of FBI Background Files* hearing, July 17, 1996, p. 59.

⁷⁶ Prepared written testimony of C. Boyden Gray, p. 8.

⁷⁷*Id.*, p. 9.

⁷⁸*Id.*

the file for derogatory information, ultimately sending the report on to the Deputy White House Counsel for adjudication.⁷⁹

Because the Security Office maintained all of the confidential files on every individual with current access to the White House complex, the office was equipped with a separate vault room that was attached to the Security Office. All of the files were kept in the vault which was equipped with cabinets containing 70 rotating bins.⁸⁰ The files were stored in the bins alphabetically. The Security Office vault could be accessed only by entering and going through the Security Office. The door to the vault had a lock with a combination which only a few authorized individuals were given. The only other persons with access to the vault were members of the Office of Records Management.⁸¹ This Office uses two of the four file cabinets in the Security Office vault to store its records. Terry Good, the Director of the Office of Records Management testified that his office stores materials from the White House office that “ranges from items that are considered confidential through security classified materials.”⁸² During the Clinton administration, Records Management also stored White House Counsel’s Office files on all individuals being considered for appointments throughout the government.⁸³ Although the Office of Records Management file cabinets have separate locks, Good testified that they are often left unlocked during the day.⁸⁴

3. The transition from the Bush administration to the Clinton administration

Since the end of the Nixon administration, Jane Dannenhauer briefed the attorneys in each new administration on what the Security office was and what it did. As she had done with past administrations, Dannenhauer met with several of the attorneys from the Clinton White House Counsel’s Office before she left her position at the White House in March 1993.⁸⁵ She initially met with four or five of the attorneys, none of whom would be supervising the Security Office.⁸⁶ Dannenhauer then met with Craig Livingstone, who would ultimately become the new Director of the Security Office.⁸⁷ Ms. Dannenhauer testified that Livingstone appeared only to work there “part-time” while she was there. Mr. Livingstone “would come in and maybe be there a half a day.”⁸⁸ Several weeks after the administration took office, Bill Kennedy, the Assistant White House Counsel who would be supervising the office, finally met with Ms. Dannenhauer.⁸⁹

Ms. Dannenhauer’s assistant since 1981, Nancy Gemmell, stayed on in the White House Security Office for 7 months into the new administration.⁹⁰ Although the office still was not entirely staffed

⁷⁹*Id.*, p. 10.

⁸⁰ Livingstone, June 14, 1996, p. 38.

⁸¹ Good, June 25, 1996, p. 16.

⁸²*Id.*

⁸³*Id.*

⁸⁴*Id.*, p. 17.

⁸⁵ *Security of FBI Background Files* hearing, June 19, 1996, p. 70.

⁸⁶*Id.*

⁸⁷*Id.*

⁸⁸*Id.*, p. 82.

⁸⁹*Id.*

⁹⁰*Id.*, p. 48.

at the time she left, Gemmell assisted in training the new employees in the procedures of the office.⁹¹ She testified that she explained the Secret Service lists to the people working in the office and informed them that the initial list received from the Secret Service had to be updated.⁹² Ms. Gemmell testified that an updated list needed to be ordered from the Secret Service once personnel decisions were made, especially in offices where there would be a high turn-over.⁹³ The Clinton administration kept Gemmell on until she retired on August 13, 1993.

B. CLINTON ADMINISTRATION PERSONNEL AND OPERATION OF THE
OFFICE

1. Who hired Craig Livingstone?

Craig Livingstone, the new Director of the White House Security Office quickly came to the forefront of the investigation of the unauthorized requests of FBI background files. Although the office was supposed to maintain primarily the same functions as in previous administrations, the Clinton administration changed the name from the White House Security Office to the Office of Personnel Security (OPS) after Livingstone took over in early February 1993. Livingstone remained in this position until he resigned, announced at the committee's June 26, 1996 hearing.

Mr. Livingstone enjoyed a particularly long tenure, outlasting three White House Counsels and numerous supervisors.⁹⁴ However, nobody in the Clinton administration has taken responsibility for bringing Craig Livingstone into the White House. Livingstone himself cannot remember who hired him for the position of Director of OPS. He explained that he had been around during the campaign as an advance man, as well as assisting at the 1992 Democratic National Convention, "coordinating security" for the Democratic Finance Committee's VIP operations.⁹⁵

David Craig Livingstone began his political career in 1984 working as an advance man on the Gary Hart for President and the Mondale/Ferraro campaigns. Mr. Livingstone was responsible for "organizing large crowd events" according to his resume.⁹⁶ Mr. Livingstone testified that he then spent the next few years "work[ing] in a bar and restaurant, work[ing] on small campaigns, Democratic initiatives."⁹⁷ However, his resume states that during this period he was an advance man for the Reagan/Gorbachev Summit Meeting in Geneva, Switzerland where he was responsible for arranging international press appearances for Presidents Reagan and Gorbachev. He also claims to have secured a 55 minute meeting between U.S. citizens and the General Secretary.

⁹¹ *Id.*, p. 48.

⁹² *Id.*, p. 50.

⁹³ *Id.*, pp. 50-51.

⁹⁴ Livingstone remained in the position of Director throughout the tenures of Counsels Bernie Nussbaum, Lloyd Cutler and Abner Mikva. He also outlasted his supervisors and associate counsels William Kennedy, Beth Nolan, and Christopher Cerf.

⁹⁵ Livingstone, 3/22/96 dep. p. 14. (See also, the Washington Post, September 9, 1996, pp. A1, A12. The Washington Post reported that a friend of Livingstone's stated that Livingstone's job consisted of posting himself at an escalator in the convention hall and saying "good evening" to VIPs who walked by. "Craig said his job was to meet and greet.")

⁹⁶ White House document CGE 46232.

⁹⁷ Livingstone deposition, March 22, 1996.

Mr. Livingstone also worked for Senator Timothy E. Wirth. In his resume, he states that he coordinated Senator Wirth's transition from the House of Representatives to the U.S. Senate. Although it is absent from his resume, Mr. Livingstone worked for the Hollywood Women's Political Committee "doing their Washington work."⁹⁸

Craig Livingstone's first encounter with Al Gore was in 1988, when he served as his trip director traveling "daily" with Mr. Gore and claims to have produced Mr. Gore's 1988 Presidential announcement. Mr. Livingstone also failed to mention in his deposition or on his resume that he worked on the 1988 Dukakis for President campaign.⁹⁹ Livingstone also worked as the operations director for the Democratic National Committee Convention staff in 1988 in Atlanta, GA where he coordinated operations for DNC Chairman Paul Kirk. He returned to working at bars and restaurants during the interim and "coordinated screenings" for the highly controversial movie "The Last Temptation of Christ" in 1988. He also worked at a public relations company where he claims that he "prepared clients for legislative appearances."¹⁰⁰

Mr. Livingstone worked for Washington, DC Councilwoman Charlene Drew Jarvis for approximately 1 year before he began his first employment with the Clinton campaign doing advance work.¹⁰¹ From October 1991 to November 1992, Mr. Livingstone, according to his resume, was the "Senior Consultant to Counter-Event Operations" for Clinton/Gore '92. Mr. Livingstone claims to have "successfully deployed several of the infamous "Pinocchio" and "Chicken George" media events.¹⁰² Mr. Livingstone also claims credit for "Special Operations and Advance" for then-Governor Clinton's successful primary and general election as well as assisting in the "creation and execution of mission objectives of the Clinton for President, Washington, D.C. local headquarters."¹⁰³

In between Bill Clinton winning the primary but before the general election, Craig Livingstone went to "Africa to work training some soldiers, Democratic campaign techniques."¹⁰⁴ After returning from the Angola training grounds, Livingstone worked with the "VIP financial staff" on fundraising projects for President-elect Clinton and Vice-President-elect Gore. By November 1992, Livingstone was the lead and site lead advance person for the Clinton/Gore '92 campaign.

After the election, Livingstone was the director of security for the Presidential Inaugural Committee (PIC). He states that he had "responsibility for security at inaugural headquarters and all events."¹⁰⁵ In his deposition, Livingstone explained that his duties as director of security at PIC were to ensure that events were handled with the safety of the attendees in mind as well as producing

⁹⁸ *Id.*

⁹⁹ Livingstone SF-86 form completed 2/16/93 to begin his FBI background investigation.

¹⁰⁰ White House document CGE 46231.

¹⁰¹ Livingstone deposition, p. 12.

¹⁰² During President Bush's speeches figures dressed up as Pinocchio and as a chicken began to appear in the crowd and heckle President Bush.

¹⁰³ White House document CGE 46230.

¹⁰⁴ Livingstone deposition, p. 13.

¹⁰⁵ White House document CGE 46230.

the event in the manner that the Clintons would want it done.¹⁰⁶ On his resume, he wrote that the “Mission statement” of his job, was to “[p]rotect the integrity of the Office of the President.”¹⁰⁷ He also stated that he was responsible for securing the PIC computer network against fraud and theft.¹⁰⁸ According to theft reports by the Federal Protective Service, more than \$174,000 worth of the Inaugural Committee’s computers, VCR’s, radios, cellular phones, pagers and other electronic gear disappeared from the committee headquarters.

After the Inauguration, Livingstone sought to obtain a position at the Clinton White House. Mr. Livingstone testified that he was asked to assist with the advance for President Clinton’s first Cabinet meeting at Camp David.¹⁰⁹ Mr. Livingstone worked on advance for the Cabinet meeting from January 25 through 30, 1993.¹¹⁰ While organizing advance for the Cabinet meeting, Livingstone worked with Christine Varney, President Clinton’s new Cabinet Secretary. Ms. Varney testified that she knew Livingstone prior to the Clinton campaign, “he was generally known as one of the guys around town who did advance for Democratic party stuff.”¹¹¹ Ms. Varney could not recall whether Livingstone mentioned the job in the Security Office to her or whether she mentioned it to him.¹¹² Ms. Varney did state that although she was unclear on whether she told Livingstone about the position, she believes it unlikely that she approached Livingstone about the position because she would not have known about it at that time.¹¹³

According to Associate White House Counsel Cheryl Mills, at the end of January or beginning of February, Deputy Counsel Vince Foster told Mills that he was planning on speaking with Livingstone about one of the lower-level administrative positions in the Security Office.¹¹⁴ Mr. Foster also spoke with Varney about the position for Livingstone. He described the work to Varney as, “an administrative paper-pushing kind of job, [for] someone who knew most of the new Clinton employees, to sit on them to make sure they got their paperwork done.”¹¹⁵ Based on Foster’s description, Varney told Foster that Craig Livingstone would be appropriate for a position with that level of responsibility.¹¹⁶

Mr. Foster and Cheryl Mills eventually interviewed Livingstone for what Mills described as the “most junior position” in the Security Office.¹¹⁷ She explained the position to Livingstone as administrative, primarily collecting and sending out forms. She also indicated to him that whoever was hired to fill Jane Dannenhauer’s position as Assistant to the Counsel, would make the ultimate deci-

¹⁰⁶ Livingstone deposition, March 22, 1996, p. 18. (See also, Varney deposition, July 23, 1996 dep., p. 14. Christine Varney, the general counsel of PIC, described Livingstone’s position as handling the logistics of transportation to and from the Navy Yard, where PIC was located, as well as handling passes or credentials for PIC employees and volunteers.)

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Livingstone deposition, March 22, 1996, p. 21.

¹¹⁰ White House document CGE 048536.

¹¹¹ Varney deposition, March 23, 1996, p. 15.

¹¹² Varney deposition, March 23, 1996, p. 18.

¹¹³ *Id.*, pp. 18–20. (See Livingstone deposition. Livingstone, however, stated that it was Varney who told him about the position in the Security office.)

¹¹⁴ Deposition of Cheryl Mills, August 2, 1996, p. 15.

¹¹⁵ Varney deposition, p. 19.

¹¹⁶ *Id.*

¹¹⁷ Mills deposition, p. 16.

sion on whether to hire Livingstone.¹¹⁸ According to Ms. Mills, Livingstone indicated to both Foster and Mills that he viewed the job as a temporary position, as he was interested in a position as Director of the Military Office.¹¹⁹ Although many have suggested a role for Vince Foster in hiring Craig Livingstone, Mr. Livingstone failed to recall any contact whatsoever with Mr. Foster when he testified under oath in his deposition.¹²⁰ The Security Office position for which Livingstone interviewed with Foster and Mills was relatively low-paying and not as challenging a position as Livingstone wanted.¹²¹

According to White House records, Livingstone began working in the Security Office on February 8, 1993.¹²² On that date, he wrote a memo to Cheryl Mills reviewing the duties and personnel in the Security Office.¹²³ Mr. Livingstone states in the memo that he “reviewed the White House Security Office as requested.”¹²⁴ He stated that Jane Dannenhauer and Nancy Gemmell would be staying on for a short period of time and reporting to Livingstone. He also explained that he would be meeting with the IRS and FBI for briefings on their respective roles in the background process. Mr. Livingstone attached a proposed memo to Jane Dannenhauer to go out under the name of the Deputy Assistant to the President and Deputy Counsel directing Dannenhauer to notify her staff that effective February 8, 1993 Craig Livingstone would serve as the Director of the White House Security Office with Dannenhauer serving as his “advisor” until March 1, 1993, “whereupon, it is expected she will submit her resignation.”¹²⁵

According to Cheryl Mills’ testimony, Livingstone was to be an assistant in the office and a more senior person was to be hired to replace Jane Dannenhauer. When asked whether she recalls learning that Livingstone had become the Director of the office, she testified: “I actually don’t ever recall learning that fact, but I am sure there became a point in time later on in the year when it must just have been self-evident. But I don’t recall learning that fact.”¹²⁶ In contrast, the February 8, 1993 memo, with her handwritten notes in the margin, clearly and explicitly shows that Livingstone himself informed her that he was the Director of the Security Office. Associate Counsel William Kennedy, who eventually was assigned the responsibility of oversight of the Security office, was not hired until February 10, 1993, 2 days after the memo was written.¹²⁷

Livingstone testified in his first committee deposition that Christine Varney introduced him to people in the Counsel’s Office, one of whom was Cheryl Mills.¹²⁸ Mr. Livingstone stated that he had a brief discussion with Mills about the position in the Security Office, which she described as largely administrative.¹²⁹ Ms. Mills explained to him that she would not be overseeing the office, however

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Livingstone, 3/22/95 dep., pp. 22–23.

¹²¹ Mills deposition, p. 16.

¹²² White House documents CGE 053841, 046220.

¹²³ White House document, CGE 48606.

¹²⁴ White House document CGE 048606–608.

¹²⁵ *Id.*, p. 048608.

¹²⁶ Mills deposition, p. 16.

¹²⁷ White House document CGE 053841.

¹²⁸ *Security of FBI Files* hearing, June 26, 1996, p. 215.

¹²⁹ *Id.*

someone would soon be appointed. Shortly thereafter, William Kennedy was appointed as Assistant Counsel to the President and took control of oversight of the Security Office.¹³⁰

Former White House Counsel Bernard Nussbaum recalled yet another version of the hiring of Craig Livingstone. He stated, “at the time I arrived in the White House on January 20, 1993, or shortly thereafter, Craig Livingstone was acting already in the Office of Personnel Security. That’s when Mr. Foster and I arrived . . . [h]e was in the White House, I believe, when I got there.”¹³¹ Former Assistant Counsel to the President Kennedy testified that Livingstone was already working in the Security Office.

I arrived the first week in February and went on the payroll on February the 10th, I believe. When I arrived, Craig was acting as Acting Director of the Office of White House Personnel Security. I was informed by Mr. Foster that was the position he was under consideration for. I don’t know who told Mr. Foster that or on what basis.¹³²

Mr. Livingstone himself stated that he was working in the office when Kennedy arrived at the White House. Mr. Livingstone was not on payroll at the time, and stated that he still considered himself an “advance person.”¹³³ Mr. Livingstone did not go on the payroll for several weeks. According to Kennedy’s testimony, Livingstone had a probationary period while waiting for his FBI background investigation to be completed.¹³⁴ His FBI background investigation was initiated on February 18, 1993 and completed on March 13, 1993.¹³⁵

In the course of Livingstone’s background investigation FBI Agent Dennis Sculimbrene conducted interviews on March 1–3, 1993, of Livingstone’s supervisors at the White House, including Bernard Nussbaum and Bill Kennedy. Agent Sculimbrene took contemporaneous notes of the meeting where Nussbaum mentioned that although he had only known Livingstone for the period of time since he had been employed in the new Clinton administration, he understood that Craig Livingstone “had come highly recommended to him by HILLARY CLINTON.”¹³⁶ Mr. Nussbaum added that Mrs. Clinton “has known his mother for a longer period of time.” Mr. Kennedy told Agent Sculimbrene that “he did not hire” Craig Livingstone and was aware that Livingstone “may not stay in his current position.”¹³⁷

Another FBI agent who was assigned to the White House, Gary Aldrich, recalled a conversation with Assistant Counsel and Rose Law Firm partner Bill Kennedy. Mr. Kennedy asked the agent what type of person should be in the position of Director of the Security Office. Agent Aldrich answered that it should be “somebody

¹³⁰ *Id.*

¹³¹ *Security of FBI Files* hearing, June 26, 1996, p. 56.

¹³² *Id.*, pp. 58–59.

¹³³ *Id.*, p. 170.

¹³⁴ *Id.*, p. 172.

¹³⁵ Secret Service Documents (unnumbered) (in committee files).

¹³⁶ Nussbaum has denied that he ever made the statement. The interviewing agent, Dennis Sculimbrene, does not remember the interview of Mr. Nussbaum, however he stated that his usual practice was to transcribe his notes immediately following any interview.

¹³⁷ March 1–3, 1993 interviews with White House supervisors in the course of the FBI background check on Craig Livingstone.

squeaky clean, meticulous, careful, discreet, mature, someone with a depth of understanding of security issues.”¹³⁸ Mr. Kennedy later told Agent Aldrich: “it doesn’t matter anyway; it’s a done deal. Hillary wants him [Livingstone] for that slot.”¹³⁹ Both Agent Sculimbrene and Aldrich testified that Kennedy told them that he had to hire Craig Livingstone.

Mrs. Clinton publicly denied hiring or even knowing who Craig Livingstone was until this year. In response to questions by reporters during her trip in Helsinki on July 10, 1996, Mrs. Clinton said, “I did not know him. I did not have anything to do with his being hired, and I do not remember even meeting him until sometime in the last year.” In contrast, an intern working in the White House Office of Personnel Security informed this committee of an encounter with Mrs. Clinton that puts her denials of knowing Craig Livingstone in question.

White House intern, Gina Gibson, said that she was being shown around the White House when she saw Mrs. Clinton approaching from down the hall. Ms. Gibson said that as Mrs. Clinton passed she said “Hello Craig” and kept on walking.¹⁴⁰ Ms. Gibson interned at the White House from May 1994 through July 1994, well before the time period Mrs. Clinton said she first knew who Craig Livingstone was.

Craig Livingstone participated in numerous other activities within the White House where contact with President Clinton and Mrs. Clinton would have been likely. Craig Livingstone was sent to Little Rock, AR, January 1–6, 1994, to handle arrangements for President Clinton’s mother’s funeral.¹⁴¹ Included in the numerous other advance trips that Livingstone participated in was the October 22, 1993, Boston trip on which he was on advance for President Clinton,¹⁴² the April 21–25, 1994 advance trip to Boston for President Clinton, or when he was the site lead for President Clinton’s May–June 1994 European trip.¹⁴³ These are just a few of the advance trips which Livingstone likely would have had contact with the President or Mrs. Clinton.

In May 1994, Livingstone wrote a memo to David Watkins requesting that he be provided with a cellular telephone since his “duties now require that [he] be on call during the weekends to assist the President in whatever manner necessary.” If President Clinton did not know Livingstone personally, why did Livingstone need to be on call for him on weekends? What did Livingstone believe his duties entailed in order to “assist” the President?

Three days before the White House received Livingstone’s background investigation, Kennedy sent a March 10, 1993 memo to David Watkins, Assistant to the President for Management and Administration, requesting that the effective employment date for Livingstone be established as February 8, 1993.¹⁴⁴ When Craig

¹³⁸ Aldrich deposition, July 18, 1996, p. 31.

¹³⁹ Aldrich deposition, July 18, 1996, p. 32.

¹⁴⁰ Telephonic staff interview of Gina Gibson.

¹⁴¹ White House document, CGE 54412.

¹⁴² White House document, CGE 54410.

¹⁴³ White House document, CGE 54387. Mr. Livingstone authored a memo to Tricia Northcutt in preparation for this trip requesting numerous sets of Presidential cufflinks, Presidential hats, Presidential pins, Presidential key chains, a ladies stick pin, Presidential pens and Presidential tie bars before he departed on May 23, 1994 for England.

¹⁴⁴ White House document CGE 046220.

Livingstone's March 1993 FBI background information was finally given to the Secret Service in the fall of 1993, the Service raised concerns with Kennedy about derogatory information in Livingstone's background.¹⁴⁵

Secret Service Agent Arnie Cole recalled that he was not aware that Livingstone would be taking over the position until the end of February 1993.¹⁴⁶ The Secret Service had stressed to the Clinton transition team how important the position of Director of the Security Office was in getting all the new people in and making sure everyone had a pass. Mr. Livingstone himself did not have his permanent White House pass until November 23, 1993. The FBI forwarded all of the results of Livingstone's background investigation to Nussbaum on March 16, 1993 and the file was not forwarded to the Secret Service for adjudication until September 20, 1993. Agent Cole testified that he raised questions about "derogatory information" in Livingstone's background with Kennedy.¹⁴⁷ Agent Cole further testified that he raised concerns about Livingstone with his superior at the Secret Service and "asked Mr. Kennedy if he concurred with my concerns one way or the other, and he did not, and ultimately Mr. Livingstone received his White House pass."¹⁴⁸ Another 2 months passed before Livingstone's permanent pass was finally approved on November 23, 1993.

Questions still remain as to how Livingstone was actually hired as the Director of the White House Security Office. Cheryl Mills states that he was to be an assistant in the office, yet she receives a February 8, 1993 memo where he clearly assumes the role of the Director. Messrs. Kennedy and Nussbaum both state that Livingstone was already in the office when they arrived, but neither of them questioned his background or qualifications for the position. Mr. Kennedy himself stated in a memo to Counsel to the President Bernard Nussbaum that Livingstone probably would not be in the position for long, as he was hoping to get the position as Director of the Military Office.¹⁴⁹

Finally, neither Kennedy nor Nussbaum mentioned that Mrs. Clinton had either recommended Livingstone or directed that he be placed in the "slot" of Director of the Security Office. In fact, both denied that Mrs. Clinton had anything to do with the hiring of Craig Livingstone. It remains a mystery how he came to the attention of former Rose Law Firm partner, then Deputy White House Counsel Vince Foster. What we do know is that both the FBI and the Secret Service voiced their concerns about hiring Craig Livingstone to head the White House Security Office. Despite these concerns and the fact that Kennedy knew that he did not even want the position, Livingstone was given absolute control.

¹⁴⁵ Cole, 7/10/96 dep., pp 22-23.

¹⁴⁶ *Id.*, p. 13. Secret Service Agent Arnie Cole is the supervisor of the White House Access Control Branch and as such, primary point of contact for Livingstone in his capacity as Director of the White House Office of Personnel Security. Mr. Livingstone did not receive his temporary pass until February 26, 1993.

¹⁴⁷ Cole deposition, pp. 21-22.

¹⁴⁸ *Security of FBI Files* hearing, July 17, 1996, pp. 99-104.

¹⁴⁹ White House document CGE 048543.

2. *Craig Livingstone's quest for the Military Office*

It was no secret that Livingstone wanted the position of Director of the Military Office. In a February 22, 1993 memo from Bill Kennedy to Bernard Nussbaum and Vince Foster, Kennedy addressed hiring Livingstone as the Director of the Office of Personnel Security. Mr. Kennedy wrote:

[Craig Livingstone] is willing to accept the job at a salary of \$45,000, although reserving the right to look for something better, such as becoming the Director of White House Military Affairs for which he is apparently being considered. That position apparently would not open until sometime in June, 1993, if at all. There is probably a good chance this office will lose Mr. Livingstone.¹⁵⁰

After Foster interviewed him for the "junior position" in the Security Office, Mills told the committee that she asked Foster why Livingstone would not be appropriate as the Director of the Military Office. According to Mills, Foster explained why it would be unreasonable for Livingstone to be in that position. He told her that it was usually a person with a long term history in the military and a relatively senior retired officer.¹⁵¹

Mr. Livingstone approached numerous people about his desire to become Director of the Military Office. He spoke to Bruce Lindsey,¹⁵² George Stephanopoulos,¹⁵³ Bill Kennedy,¹⁵⁴ Gary Aldrich, Chuck Easley,¹⁵⁵ Harry Thomason,¹⁵⁶ George Saunders,¹⁵⁷ Arnie Cole,¹⁵⁸ Dennis Sculimbrene,¹⁵⁹ Vince Foster¹⁶⁰ and Cheryl Mills¹⁶¹ among others.

Mr. Thomason testified that "for some reason, all the employees of the White House thought if they needed to unload things or tell things, that they could see me."¹⁶² Although Thomason testified that he remembered Craig Livingstone met with him, he was unable to recall the context of his notes of that meeting where he wrote: "Control of military office and SS [Secret Service] could very well derail future efforts."¹⁶³ FBI Agent Gary Aldrich testified that he too had a conversation with Livingstone about the Military Office position:

¹⁵⁰ White House document CGE 048543.

¹⁵¹ Mills deposition, August 2, 1996, p. 18.

¹⁵² Deposition of Bruce Lindsey, July 29, 1996, pp. 20–21. (Lindsey was asked whether Livingstone ever approached him about the job in the Military Office. Lindsey stated, "Yes. We did an event at the Library of Congress during the Inaugural and he, I think, was doing an advance on the event, and I was standing outside and he told me that he wanted to be head of the White House Military Office. . . . I asked whether or not it had to be a service person. He indicated it did not. I don't know if I said anything else.")

¹⁵³ White House document CGE 046222.

¹⁵⁴ White House document CGE 048543.

¹⁵⁵ Deposition of Chuck Easley, July 26, 1996, p. 42. (Easley stated that the first time he met him, Livingstone told him that he wanted to be the Director of the Military Office. That occurred sometime in early February 1994.)

¹⁵⁶ Thomason deposition, p. 71.

¹⁵⁷ Saunders, 7/13/96, p. 30. (Livingstone told Saunders that the job he really would like to have is head of the Military Office.)

¹⁵⁸ Cole, 7/10/96, pp. 10–11.

¹⁵⁹ Sculimbrene, 7/15/96, p. 53. ("[H]e told me, and as I understood from others, he was looking for another job. He told me he wanted to run the Military Office.")

¹⁶⁰ See, Mills, *supra*.

¹⁶¹ *Supra* note.

¹⁶² Thomason, 5/17/96, pp. 71–72.

¹⁶³ Bobbie Faye Ferguson document, BFF 1067.

He told me that his goal in the White House was to become head of the [M]ilitary Office and that he felt that the Chief of Staff, Mack McLarty, was not supporting him enough in his quest to do that. And he often spoke of arguments he said he had with the Chief of Staff and others relative to his seeking this promotion.¹⁶⁴

On May 27, 1994, Livingstone wrote a note to George Stephanopoulos thanking him for offering to be of assistance in his efforts “to further serve the President as Director of the White House Military Office.”¹⁶⁵ Mr. Livingstone listed four points which he believed should be considered in his quest for the office. The last of the four points, that “the job, by nature, should have someone with sound political skills—particularly as we approach N.H. [New Hampshire],” is most revealing of Livingstone’s lack of understanding that all jobs in the White House are not political.¹⁶⁶

The Military Office is responsible for all of the military operations as they relate to the White House. White House communications, military aides, and the President’s doctor all come under the supervision of the Military Office. The use of Air Force One, the helicopter as well as any other transportations of the President are under the control of this office. In essence, every military asset in the White House is run by the White House Military Office, an office for which a man of Craig Livingstone’s background was not suited.

3. Livingstone’s duties as Director of the White House Office of Personnel Security

After Livingstone became the Director of the Security Office, he requested that the name be changed to the Office of Personnel Security (OPS).¹⁶⁷ Although the Clinton administration changed the name of the office, it was supposed to perform essentially the same duties as it had in prior administrations. In a 1994 memo to Jodie Torkelson, Assistant to the President for Management and Administration, Livingstone described his duties as Director of OPS:

- process security papers for Presidential appointees and White House staff; handle daily contact with the FBI;
- maintain frequent contact with attorneys on an individual case basis;
- work with the Secret Service in processing applicants for access and White House passes; sit on numerous committees with the Secret Service;
- act as a liaison between Secret Service and staff;
- maintain clearance processes for White House Intern/Volunteer programs; initiate memoranda to the attorneys;
- initiate and maintain Security Interview process for both staff applicants and intern/volunteers;

¹⁶⁴ Aldrich deposition, p. 34.

¹⁶⁵ White House document CGE 46222.

¹⁶⁶ The thank-you note produced to this committee had a cover page attached stating “What should we do with this request?” Below this question is written the word “Nothing” and it is circled. White House document CGE 46221.

¹⁶⁷ White House document CGE 048607.

act as principal liaison with all government-wide department/agency security officers in assisting in their clearance processes, and;
process compartmentalized clearances for staff.¹⁶⁸

But in contrast to Jane Dannenhauer, his predecessor, Livingstone was involved in more than simply running the Security Office. Although Livingstone described one of his primary duties in 1993 as reviewing FBI background files,¹⁶⁹ he continued to do advance work for President Clinton even after taking over the position as Director of the Security Office.

Mr. Livingstone would often participate in Presidential and First Lady advance trips, traveling ahead of the President or First Lady to set up and handle logistics.¹⁷⁰ In fact, Livingstone stated, “we [White House appointees] are asked to do advance from time to time, and it’s something that I have done. I would consider that part of my job.”¹⁷¹

Mr. Livingstone also told FBI Agent Gary Aldrich that he was the Clinton administration’s liaison to the FBI and spoke often with the Director of the FBI, Louis Freeh.¹⁷² The committee received a copy of a letter from FBI Director Louis Freeh to Livingstone that appears to confirm this fact. In the letter, Director Freeh said that “the President and the American people are indeed fortunate to have your dedication and service.” After thanking Livingstone and “Stephanie” for their help with Director Freeh’s sons, he said that “we look forward to seeing both of you soon. Don’t forget to visit us at the FBI.” It was signed “Very truly yours, Louie.”¹⁷³

Mr. Livingstone altered the historical duties of the office in other ways as well. In a memo to Counsel to the President Abner Mikva requesting a raise, Livingstone wrote, “I strongly believe that my level of work reviewing IRS records, adjudicating FBI backgrounds, conducting intake security interviews and *developing corrective plans of action for individuals with problems that can be made right.*”¹⁷⁴ The memo did not describe what kind of plans of action or problems would be involved in this newly developed duty. In addition, as individuals left the White House for other positions, they would be “debriefed” by Livingstone as part of his duties.¹⁷⁵

In a September 22, 1993 memo Livingstone requested a permanent radio and cell phone stating, “this request is necessary due to the nature of my duties as Director of White House Security.”¹⁷⁶ He did not enumerate what those duties were which required him to have a radio and cell phone. As discussed above, the next year, in May 1994, he again requested a White House issued cell phone to be “on call” during the weekend “to assist the President in whatever manner necessary.”¹⁷⁷ As in the previous memorandum, he did not describe what his duties were or what assistance the Presi-

¹⁶⁸ White House document CGE 048827–829.

¹⁶⁹ Livingstone, June 14, 1996, p. 4.

¹⁷⁰ Livingstone deposition, March 22, 1996, pp. 24–25.

¹⁷¹ *Id.*, p. 26.

¹⁷² Aldrich deposition, July 18, 1996, p. 34.

¹⁷³ White House document CGE 054403.

¹⁷⁴ White House document CGE 048059. (Emphasis added) (May 30, 1995 memo from Craig Livingstone to Abner J. Mikva, re: Follow-up to pay adjustment request.)

¹⁷⁵ Livingstone, March 22, 1996 dep. p. 31.

¹⁷⁶ White House document CGE 054067.

¹⁷⁷ White House document CGE 048523.

dent needed from him on weekends. Livingstone was also attempting to expand his role in White House security and was planning a “security committee.”¹⁷⁸

Former White House Counsel C. Boyden Gray made clear that substantive judgments on the background investigations were reserved exclusively to the White House Counsel and Deputy Counsel.¹⁷⁹ The responsibility for the adjudication was kept at the highest levels of the Counsel’s Office not only to ensure immediate access to the President with any problems, but also to ensure the confidentiality of the files.

In the Clinton administration, the responsibility was given to an associate counsel, William Kennedy, who in turn passed along the responsibility to Craig Livingstone, who in turn passed it along to his staff which consisted of interns and young individuals in their first job.¹⁸⁰ The confidentiality of all of the FBI background files was jeopardized once the Counsel to the President, Bernard Nussbaum, denounced any responsibility for this unpleasant yet necessary work. The FBI background investigations are conducted for the White House in order to protect the country in connection with potential security breaches, as well as to protect the President politically and physically. Not only did Livingstone shift his responsibility to review background investigations to lower level staff but he also was looking for creative ways for Clinton appointees to get around problems in their backgrounds, ignoring the purpose of the investigation.

Mr. Livingstone’s explanations of his duties in the White House raise questions as to whether he was authorized to undertake these tasks, and if so, by whom. It is clear on more than one occasion that his superiors were aware of what he was doing, as he outlined these additional duties in his memos to them. Mr. Livingstone’s predecessor worked long hours in her position as Director of the Security Office. She did not have time to do political advance work or to expand the mandate of her office.

What is important to note is that there was never a backlog of passes, never any security concerns raised by the Secret Service, and certainly never any unauthorized requests sent to the FBI during the tenures Livingstone’s predecessors. There seemed to be little or no supervision of Livingstone and the activities he was pursuing. The Clinton administration put someone in this sensitive office with no experience and who clearly was unsuitable as recognized by both the FBI and the Secret Service. Not only did the White House ignore the importance of the suitability issue but after placing an unsuitable person in this position, the responsible

¹⁷⁸ White House document CGE 054002 (Letter from Paul Connelly, Chief of Security and Safety Division of the White House Communications Agency to Craig Livingstone dated May 8, 1994. “I was very happy to hear of *your mandate and desire to widen your role in White House security* and am interested in participating on the White House security committee you mentioned.” (Emphasis added).)

¹⁷⁹ *Security of FBI Files* hearing, June 19, 1996, p. 23.

¹⁸⁰ Livingstone deposition, June 14, 1996, p. 49. (Livingstone stated: “I think in the first year I looked at a lot of the reports, but as we all got trained in our functions and our mission became clear, we—I trained my staff to look for certain types of information, and if there wasn’t any of that type information, that I felt confident that they could make a decision if the information was derogatory or not.” He then noted that he did not even train the staff, Lisa Wetzl, a staff assistant did, “I believe it was 1994 when Ms. Wetzl trained our staff.” Ms. Wetzl was only 22 years old when she began in the office and in a thank you note to Livingstone, she said it was the first job she ever held.)

parties, the White House Counsels, abdicated supervisory responsibility. It is not surprising then that problems would arise.

4. *Livingstone's salary requests*

Mr. Livingstone was hired as the Director of the Personnel Security Office at a salary of \$45,000 in February 1993. In a May 10, 1993 memo to Associate Counsel to the President Bill Kennedy, Livingstone requested a salary increase of \$5,000.¹⁸¹ On October 20, 1993, Livingstone did receive an increase to \$51,000 which was approved by Bernard Nussbaum.¹⁸²

Between May and August 1994, three Counsel's Office attorneys wrote letters on behalf of Livingstone requesting an increase in his salary. The Assistant to the President for Management and Administration, David Watkins, wrote a memo to Associate Counsel Beth Nolan in May 1994 noting that it had come to his attention that she had requested a salary increase for Livingstone.¹⁸³ Mr. Watkins explained that a salary freeze was in effect for all salary adjustment actions.¹⁸⁴ Nevertheless, Nolan's colleague, Associate Counsel Chris Cerf, wrote a memo to Deputy Chief of Staff Phil Lader on July 1, 1994 requesting a raise for Craig Livingstone.¹⁸⁵ Mr. Cerf wrote, "[i]t would be an overwhelming setback if Craig's frustration over his salary contributed to a decision to seek employment elsewhere. I consider this to be a significant risk that we should be doing everything in our power to minimize."¹⁸⁶

In a third attempt to get Livingstone a raise, both Beth Nolan and Deputy Counsel to the President Joel Klein joined in a memo to Deputy Chief of Staff Phil Lader.¹⁸⁷ In the memo they acknowledged that there was a general freeze on salaries but argued that an exception should be made for Livingstone, asking that he be given an immediate raise to \$60,000.¹⁸⁸ They cited his extraordinary effort to clear up a backlog of White House passes, one of Livingstone's duties as Director of Personnel Security.

Mr. Livingstone did receive a salary increase on January 8, 1995 to \$57,500, which was approved by White House Counsel Abner Mikva.¹⁸⁹ Nine months later Livingstone received yet another salary increase to \$63,750.¹⁹⁰ Before receiving that final increase Livingstone had written two memos to Counsel to the President Abner

¹⁸¹ White House document CGE 047884. (Memo from Craig Livingstone to William Kennedy, dated May 10, 1993. In the same memo, Livingstone requested that Nancy Gemmell remain on paid status through August 1, 1993. He also asked to bring on a receptionist at a reduced salary of \$17,000. "On August 1, 1993 my salary would increase TO \$50,000 from \$45,000. Based on the reduction of salary for the receptionist.")

¹⁸² White House document CGE 046144.

¹⁸³ White House document CGE 048509. (Memo from David Watkins to Beth Nolan dated May 25, 1994, re: salary adjustment. The memo was copied to Patsy Thomasson and Kelli McClure and read, "**EYES ONLY**")

¹⁸⁴ *Id.*

¹⁸⁵ White House document CGE 048622. (Memo from Christopher D. Cerf to Phil Lader, Deputy Chief of Staff, re: raise for Craig Livingstone. The memo was copied to Beth Nolan.)

¹⁸⁶ *Id.*

¹⁸⁷ White House document CGE 048627. (Memo from Joel Klein, Deputy Counsel to the President and Beth Nolan, Associate Counsel to the President dated August 19, 1994, re: raise for Craig Livingstone. The memorandum was marked "Personal and Confidential." The memo was forwarded to Livingstone with a handwritten note from Beth Nolan, "our 3rd effort, it has gone to Phil. Joel will also talk to him.")

¹⁸⁸ Nolan and Klein stated that Livingstone had worked 18 months at "an inadequate salary" of \$51,000.

¹⁸⁹ White House document CGE 046217.

¹⁹⁰ White House document CGE 046215. (The document is a "Change in Employee Status" form, change in salary requested by Abner Mikva, dated September 28, 1995.)

Mikva. The first memorandum, dated May 30, 1995, states, "I have done my best to be a good soldier," and requests a salary increase to \$65,000.¹⁹¹ The second memorandum, dated August 28, 1995, takes on a much stronger and almost threatening tone.

It would be wrong not to approve my request. Not just because I was promised but because I have demonstrated that I deserve it. I apologize for my tone but this is my last try to remain part of the team.¹⁹²

In this second request, his salary demand increased to \$70,000.¹⁹³

Mr. Livingstone's final request for a raise came on May 14, 1996, just 5 days after the committee held the White House in contempt for the failure to turn over subpoenaed documents. Among the documents that had been withheld was the White House request for Billy Dale's FBI background file. The Assistant to the President for Management and Administration, Jodie Torkelson, wrote a memo requesting information on Livingstone's salary history and any notes or paperwork on what he may have been promised. Ms. Torkelson states in the memo, "Livingstone's at it again. He's submitted paperwork for signature giving himself a raise and saying that he was promised the money by Abner [Mikva]. . . . I'd like to kill this before I leave."¹⁹⁴

Craig Livingstone claimed that two White House Counsels, Bernard Nussbaum and Abner Mikva, promised him that he would get a raise to \$70,000. He wrote memos directly to Counsel to the President Mikva stating that he deserves a raise because he had been a "good soldier" and "weathered the office through a few storms." How was Livingstone able to secure a 40 percent salary increase in only 3 years? His salary rose rapidly from \$45,000 to \$63,750. Although Livingstone complained that his predecessor made over \$60,000, he did not acknowledge that she had over 20 years of experience as Director of the Security Office. Mr. Livingstone had no background, education or experience in the area, yet he was given significant salary increases. His office was responsible for the backlog in passes yet he claimed credit and demanded rewards for clearing up that same backlog.

His persistent demands for salary increases and ability to rally the Counsel's Office behind him raise even more questions about who Craig Livingstone really is. Although most people in the White House would now deny knowing him or at best admit that they may have seen him around, Livingstone was able to garner support for his cause when necessary.

5. Livingstone brings on new staff

The White House Security Office began using interns for the first time in its history after Livingstone came on as Director. Mr. Liv-

¹⁹¹ White House document CGE 048059. (Livingstone states that at a salary of \$57,500 he was living paycheck to paycheck and complains that his predecessor, who had been in the position since the Nixon administration, made over \$60,000.)

¹⁹² White House document CGE 048058. (Livingstone also notes that his "situation" had gone on for over 2½ years, pointing out that he had "seen [the] office through a few storms.")

¹⁹³ Attached to the authorization form for the salary increase was a note from Kelli McClure to Deputy Counsel to the President James Castellito, "[t]he increase was approved by Judge Mikva. It is my understanding that it was based on a promise made when Bernie Nussbaum was here." White House document CGE 046216.

¹⁹⁴ White House document CGE 053840. (The increase in salary requested was to \$70,000.)

Livingstone's Executive Assistant, Lisa Wetzl, began as an intern in OPS in June 1993 after graduating from college in May of the same year.¹⁹⁵ Other assistants in the office started as interns before moving up to staff positions. Ed Hughes began as an intern in February 1994 after graduating from college in June 1993.¹⁹⁶ Jonathan Denbo, an assistant in the office, was an intern in the office in the summer of 1994 and was hired in September after he graduated from college in May 1995.¹⁹⁷ The staff in the office was generally very young and inexperienced. Nevertheless, all of the staff were granted top secret clearance by the White House and compartmentalized clearances from the CIA.

During 1993 and early 1994 the Office of Personnel Security had an extensive backlog in paperwork. White House appointees were not completing their paperwork and those that were completed were not being sent to the FBI. By April 1993, Livingstone was attempting to get his friend and political ally, Anthony Marceca, detailed to the office to assist with the backlog.

III. DETAIL OF ANTHONY MARCECA TO THE WHITE HOUSE

A. INTRODUCTION

Anthony Marceca is one of the central figures in the investigation of the FBI files matter. The White House claims that he was the individual responsible for ordering hundreds of files on former Reagan and Bush administration officials. First described as a "low-level clerk," the White House refused to release Marceca's name to the committee for several days. However, the committee soon learned through press accounts that the so-called low-level clerk was a White House detailee employed as a civilian investigator in the Army Criminal Investigative Division (CID). President Clinton's deputy campaign manager, Ann Lewis, claimed Marceca was a "non-political staffer."¹⁹⁸ Anthony Marceca is a longtime political colleague of Craig Livingstone. The two worked on advance for numerous campaigns since the Hart campaign in 1984.

Mr. Marceca was detailed to the White House Office of Personnel Security in August 1993 at the request of Associate White House Counsel William H. Kennedy. Mr. Kennedy wrote two letters directly to Secretary of Defense Les Aspin regarding Marceca's detail.¹⁹⁹ Kennedy, in one letter, stated that he had "learned of Agent Marceca's unique investigative abilities and background and would greatly appreciate his full-time assistance here."²⁰⁰

Once ensconced in the office, Marceca attempted to use the position as a springboard to a Presidential appointment. He was interviewing for positions as a U.S. Marshal as well as Inspector Gen-

¹⁹⁵ Wetzl deposition, June 17, 1996, p. 7. Ms. Wetzl began as an OPS intern in June 1993, she was hired as a staff assistant in August 1993 and promoted to Executive Assistant in the fall of 1994. Ms. Wetzl left the office in September 1995 to work as a confidential assistant to Secretary of the Army, the Honorable Togo D. West, Jr.

¹⁹⁶ Deposition of Edward Hughes, August 13, 1996, p. 6. (Hughes became Livingstone's Executive Assistant in September 1995.)

¹⁹⁷ Deposition of Jonathan Denbo, September 4, 1996, p. 3.

¹⁹⁸ Ann Lewis, *This was a simple mistake*, USA Today, June 10, 1996, p. A12.

¹⁹⁹ White House documents CGE 043814.

²⁰⁰ White House documents CGE 043816, letter from Kennedy to Aspin, dated April 13, 1993, re: request for detailee.

eral positions at several different agencies.²⁰¹ His plans came to a halt when the White House received his FBI background file and informed him that there were problems in his background which would prevent his detail from being renewed and prevent him from receiving a Presidential appointment.²⁰²

Mr. Marceca continued working in the Office of Personnel Security until his original 6-month detail ended in February 1994. Although he received a hard pass and had full access to the White House, his background investigation was not completed until December 1993 and he was never cleared by the Secret Service for a permanent pass. Along the way, his daughter also joined the White House, apparently assisting in the Office of Presidential Personnel.²⁰³ His son, Nathan, obtained a White House job as a “gift analyst” in the winter of 1995.²⁰⁴

After leaving the White House, Marceca remained in contact with both Livingstone and the White House. He volunteered to answer phone calls from the “comments line” following the President’s addresses to the Nation. Mr. Marceca retained a White House volunteer pass until May 1995 and remained on a volunteer access list until June 21, 1996, several weeks after the discovery of the FBI files and Marceca’s role became known.²⁰⁵ According to phones message he left for Livingstone, Marceca also appears to have worked on several Presidential and Cabinet level advance trips between 1994 and 1996.²⁰⁶

Anthony Marceca is far from the low-level clerk the White House has claimed. He and Craig Livingstone worked together as a political “team” since 1984 and continued their partnership up to the present. Given the backgrounds of both Livingstone and Marceca, it is astonishing that the Clinton administration would put these two individuals in the sensitive office of Personnel Security with access to the FBI file of any person who has ever had a background investigation.

B. MARCECA PARLAYS HIS POLITICAL BACKGROUND WITH CRAIG LIVINGSTONE INTO A WHITE HOUSE POSITION

Anthony Marceca testified that he met Craig Livingstone while they were both doing advance work for the Gary Hart campaign in 1984.²⁰⁷ The two had become friends and discovered that they

²⁰¹ Marceca document (unnumbered) calendar of Anthony Marceca dated December 27, 1993; January 7, 1994; January 14, 1994; February 2, 1994; February 3, 1994; February 7, 1994; February 8, 1994; February 25, 1994; and, March 2, 1994.

²⁰² Kennedy deposition, June 18, 1996, p. 41; Livingstone deposition, June 14, 1996, p. 60.

²⁰³ Marceca documents (unnumbered). Calendar of Anthony Marceca dated January 20, 1994: “Andrea’s first day in Presidential Personnel.” It is not clear what his daughter was doing for the office. There was an FBI name check run on her; however, she did not have a White House pass.

²⁰⁴ Committee interview of Jonathan Denbo, September 4, 1996, p. 17. Mr. Denbo explained that he met Nathan Marceca when he came in to OPS to fill out his new employee paperwork. Mr. Livingstone told Denbo that Nathan was Tony Marceca’s son.

²⁰⁵ Easley deposition, p. 57. Mr. Easley, who replaced Craig Livingstone, stated, “I learned that Mr. Marceca had a temporary volunteer pass that was deactivated May 1995, and since then he has been on the volunteer access list.” Mr. Easley removed Marceca’s name from the access list on June 21, 1996, after the Secret Service notified him of the name.

²⁰⁶ White House documents CGE 054248–54275. (The committee did not receive any notice of the contact between the White House and Marceca until a document production on the evening of September 5, 1996. The White House documents had been subpoenaed by the committee and were over 2 weeks late in being produced.)

²⁰⁷ Marceca deposition, p. 24.

worked well together.²⁰⁸ Messrs. Livingstone and Marceca formed an “advance team” where Livingstone would handle the public relations end of the advance work and Marceca would handle the logistics end.²⁰⁹ Dennis Casey, a political consultant from Pennsylvania, who worked for the Hart campaign in 1984, remembered Livingstone and Marceca.²¹⁰ Casey testified that, during a campaign meeting, Livingstone was present and reported on “peccadilloes and vulnerabilities of labor leaders and prominent public officials in hopes of neutralizing them or getting their support switched from Mondale to Hart.”²¹¹ Mr. Casey testified that he informed Livingstone that he felt the gathering of such information could hurt the campaign and directed him to stop that type of work.²¹² Mr. Livingstone disagreed with Casey and angrily left the room.²¹³

Mr. Casey recalled that he met Marceca at that time as well. Mr. Marceca spoke with Casey about the information Livingstone gathered and told Casey that it was time to “play hardball with the dirt Mr. Livingstone had gathered.”²¹⁴ After an incident in which Marceca took \$200 from the campaign petty cash, Casey called the Washington campaign office of Gary Hart and notified the office that Marceca should not be allowed back.²¹⁵

The team of Livingstone and Marceca worked on several other campaigns. After the Hart campaign in 1984, they both moved on to the Mondale campaign. Mr. Marceca stated that the management of the Mondale campaign knew both him and Livingstone and kept them together as a team.²¹⁶ In 1986 the two were asked to work advance for the Hart for President announcement in Colorado.²¹⁷ Both Marceca and Livingstone accepted the invitation and worked on advance with the campaign until Hart dropped out of the race.²¹⁸ In 1987, Livingstone asked Marceca to work with him on Al Gore’s announcement.²¹⁹ Mr. Marceca agreed and worked several advance trips with Livingstone for the Gore Campaign.²²⁰

Mr. Livingstone contacted Marceca on election night in 1992. Now that Clinton had won the election, Livingstone was attempting to get the position of Director of Security for the Presidential Inaugural Committee (PIC).²²¹ Mr. Livingstone contacted Marceca approximately 1 week later and asked him to stop by the Old Navy Yard, which was PIC Headquarters. When Marceca arrived at the Navy Yard, Livingstone told him that he had gotten the job as Director of Security for PIC and asked Marceca to work at PIC as the

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *See*, committee deposition of Dennis Casey, June 20, 1996.

²¹¹ *Id.*, p. 6.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*, pp. 7–8. Mr. Casey explained that Marceca had entered his office and taken the \$200. When Casey approached him the next day, Marceca explained that he needed the cash to get handbills printed and distributed. Mr. Marceca also explained that he needed the money to “pay community children or urchins to distribute the fliers door-to-door.” After Casey called the Washington office to inform them of Marceca’s actions, Marceca contacted Casey and said, “you guys got me good, right between the eyes.”

²¹⁶ Marceca deposition, June 18, 1996, pp. 25–26.

²¹⁷ *Id.*, p. 27.

²¹⁸ *Id.*, p. 29.

²¹⁹ *Id.*, p. 30.

²²⁰ *Id.*

²²¹ *Id.*, p. 34.

Security Coordinator.²²² Mr. Marceca accepted the offer and took the position on a volunteer basis, taking time off from his Army CID position. According to Marceca, he worked directly under Livingstone planning the security aspect of access to Inaugural events.²²³ Mr. Marceca spent the day of the Inaugural in the “command post,” the Navy building, “coordinating movements.”²²⁴ After the Inauguration was over, Marceca went back to his job at Army CID.

Craig Livingstone did not have such a clear recall of his work with Anthony Marceca. Although Livingstone stated that he did meet Marceca in 1984 while working advance on the Hart campaign, his recollection was that he worked with Marceca only “on occasion.”²²⁵ When asked in a deposition whether he knew of any other campaigns Marceca worked on, Livingstone stated that he knew that Marceca had worked on the Hill and he had a “vague recollection” that Marceca may have assisted at the Inaugural.²²⁶ There is a direct conflict between Livingstone and Marceca’s testimony. Clearly, Marceca testified that Livingstone asked Marceca to work with him on PIC, yet he has no recollection of it. The two worked closely together. Marceca explained that he worked at PIC for at least 40 days up to and including the day of the Inaugural.²²⁷

1. Marceca’s quest for a detail to the White House

Livingstone took a position with the White House Office of Personnel Security on February 8, 1993. Sometime after Livingstone began working at the White House, Marceca contacted Livingstone to inquire about the possibility of a detail to the National Security Council at the White House.²²⁸ Mr. Livingstone checked on the National Security Council detail and reported back to Marceca that he did not think it was possible.²²⁹ According to Marceca, Livingstone explained that there was a possibility of an opening for a clerical type position in his office, OPS.²³⁰ In March 1993, Livingstone contacted Marceca and told Marceca that he had gotten permission to bring in someone to assist in the office. He described the position as a clerical-type position, “going over people’s background reports and making files and collating information, and it . . . did not involve investigations.”²³¹ Livingstone asked Marceca to send him a resume at that time. In a deposition before the committee, Livingstone recalled that Marceca had told Livingstone that he wanted to work at the White House. Messrs. Livingstone and Marceca discussed general ways that Marceca might be available to assist the Office of Personnel Security.²³²

²²² *Id.*, p. 35.

²²³ *Id.*

²²⁴ *Id.*, p. 39.

²²⁵ Livingstone deposition, June 14, 1996, p. 22.

²²⁶ *Id.*

²²⁷ Marceca deposition, June 18, 1996, p. 36.

²²⁸ *Id.*, p. 41.

²²⁹ *Id.*

²³⁰ *Id.*, p. 42.

²³¹ *Id.*, p. 43.

²³² Livingstone deposition, June 14, 1996, pp. 24–26.

2. *The White House requests Marceca*

Mr. Livingstone presented the idea of Marceca's detail to Associate White House Counsel William Kennedy.²³³ Mr. Marceca had interviews scheduled with Kennedy on March 18 and 24, 1993.²³⁴ After interviewing Marceca, Kennedy wrote to Secretary of Defense Les Aspin on April 5, 1993 to request the detailing of Anthony Marceca. The detail was to be on a non-reimbursable basis, to OPS, beginning on April 12, 1993.²³⁵ Mr. Kennedy stated in the letter, "I have learned of Agent Marceca's unique investigative abilities and background and would greatly appreciate his full-time assistance here."²³⁶ The following day Kennedy received a reply from David C. Allen, the Director of Marceca's unit at the Army CID.²³⁷ Mr. Allen recommended Marceca for the detail, stating, "Mr. Marceca is always the master of every situation," and "[he] is a sound and logical thinker, capable of handling any number of critical and sensitive missions at one time."²³⁸ In his letter to Kennedy, Allen warned Kennedy not to be dissuaded if the military leadership of CID objected to the detail of Anthony Marceca. He further stated his readiness "to discuss, in great detail, the high regard I have for Mr. Marceca both professionally and personally."²³⁹ On the same day, April 6, 1993, Kennedy called Marceca.²⁴⁰

The letter which was sent to Secretary of Defense Les Aspin on April 5, 1993 requesting the detail of Marceca was then re-sent on April 13, 1993. The text of the letter is the same, however the date had been changed.²⁴¹ The next correspondence in the attempt to get Marceca detailed was on June 22, 1993. In that letter Kennedy wrote to Colonel Michael Sheffield, Executive Secretary to the Secretary of Defense.²⁴² In this letter he states that Craig Livingstone had requested that Special Agent Marceca be detailed to the Office of Personnel Security (OPS).²⁴³ Mr. Kennedy also notes that Marceca's experience in reviewing and screening potential candidates would be invaluable to OPS in completing its ongoing review of military personnel assigned to the White House, as well as providing personnel services related to security for the staff of the Executive Office of the President.²⁴⁴

Mr. Marceca's detail was ultimately approved on August 5, 1993, by Deputy Assistant Secretary of Defense, Lieutenant General Robert M. Alexander in a memorandum to William Kennedy.²⁴⁵ On August 9, 1993 Marceca went to the White House and received his hard pass giving him access to the White House, although he did not begin his detail at the White House until August 18, 1993.²⁴⁶

²³³ *Id.*, p. 25.

²³⁴ Anthony Marceca document (unnumbered). Calendar of Anthony Marceca, dated March 18, 1993; March 24, 1993.

²³⁵ White House document CGE 043823.

²³⁶ *Id.*

²³⁷ White House document CGE 043821.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Anthony Marceca document (unnumbered). Calendar of Anthony Marceca, dated April 6, 1993.

²⁴¹ White House document CGE 043816.

²⁴² White House document CGE 043819.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ White House document CGE 043822.

²⁴⁶ White House document CGE 043818. Detail authorization form for Anthony Marceca.

3. Marceca has access to the White House before his detail

According to White House records, Marceca was placed on “access lists” by Livingstone beginning as early as March 24, 1993.²⁴⁷ White House Access lists allow an individual to enter the White House without appointment for the period of time that they are on the list.²⁴⁸ Individuals who enter via an access list, simply check in at any entry post, produce positive identification and are granted a pass to enter the complex.²⁴⁹ Mr. Marceca was placed on access lists by Craig Livingstone and granted continuous access to the White House complex from March 24 through July 31, 1993.²⁵⁰

The Secret Service places individuals on an access list based on a request from the Office of Personnel Security.²⁵¹ Because Marceca was on an access list, he could have entered and exited the White House at any time throughout the 4 month period before his detail began and there would be no record of it.²⁵²

The White House’s attempts to get Marceca detailed to the Office of Personnel Security lasted 5 months and involved several attempts. Mr. Kennedy testified that he was told by Livingstone that the office could use Marceca’s expertise in dealing with the numerous members of the military that have access to the White House.²⁵³ Despite all of Kennedy’s efforts, he has a vague recollection of the complications of obtaining Marceca or even the outstanding qualifications that Marceca ostensibly possessed.²⁵⁴ Mr. Marceca, however, spent the majority of his time sifting through SF-86’s for errors and working on the Update Project. It appears that a great amount of time was spent in getting a friend of Livingstone’s detailed at the Army’s expense. Why was it so important to detail Tony Marceca to the White House?

C. MARCECA’S INTRODUCTION TO THE WHITE HOUSE OFFICE OF PERSONNEL SECURITY

1. Introduction

The Clinton administration had problems getting through the paperwork necessary to obtain permanent White House passes for its staffers during the first year and a half of the administration.²⁵⁵ One of the problems was a backlog in the processing of the SF-86 forms, which had been filled out by new White House staff members. The SF-86 is a questionnaire which calls for sensitive and personal information from the appointee. Former White House Counsel A.B. Culvahouse described the form as “designed to affirmatively encourage the furnishing of adverse or derogatory information.”²⁵⁶ Each SF-86 was reviewed for errors and completeness. In previous administrations, only the Counsel to the President, his

²⁴⁷ White House document CGE 047382-3. White House access list.

²⁴⁸ *Security of FBI Files* hearings, July 17, 1996, p. 148.

²⁴⁹ *Id.*, p. 147.

²⁵⁰ White House document CGE 047382-047631.

²⁵¹ Cerf deposition, August 12, 1996, p. 41.

²⁵² *Security of FBI Files* hearing, July 17, 1996, p. 149.

²⁵³ *Security of FBI Files* hearing, June 26, 1996, p. 129.

²⁵⁴ Kennedy deposition, June 18, 1996, pp. 38-44.

²⁵⁵ See generally GAO report on “Personnel Security: Pass & Security Clearance Data for the Executive Office of the President,” October 1995.

²⁵⁶ *Security of FBI Files* hearing, June 19, 1996, p. 32.

deputy and the director of the Security Office would review the SF-86's.²⁵⁷

Once checked, the SF-86 would be sent to the FBI to begin the process of a background investigation. Anthony Marceca, a temporary detailee, took responsibility for this project when he began working at OPS. Mr. Marceca testified that the first day he began to work in OPS, the backlog of SF-86 forms was piled up on his desk in a stack 2½ feet high.²⁵⁸

Although Marceca began working in the White House on August 18, 1993, prior to that, on August 9th, he went to the White House to get his pass and to discuss what his duties would be.²⁵⁹ According to Marceca, he met with Nancy Gemmell, Lisa Wetzl and Craig Livingstone.²⁶⁰ Mr. Marceca stated that at that meeting Nancy Gemmell explained to him the procedures to follow for the duties he would be performing while working with OPS.²⁶¹ Ms. Gemmell was a holdover employee who had worked in OPS since 1981, the beginning of the Reagan administration.²⁶²

During that meeting Marceca took notes of what he was told.²⁶³ Mr. Marceca stated that Nancy Gemmell showed him the procedures he should follow in completing the "Update Project" as well as other duties he was expected to perform.²⁶⁴ However when asked whether she personally gave Marceca the Secret Service list to continue the Update Project, Gemmell stated, "[N]o sir; I had no idea who would be assuming that responsibility."²⁶⁵ Ms. Gemmell did leave behind a written sheet of instructions which he would be able to refer to after she left.²⁶⁶

2. Discrepancies in Marceca's testimony

In stark contrast to his testimony before the committee that he thought everyone on the "update list" was in need of access to the White House complex, his handwritten notes make it clear that he was aware that OPS was responsible for taking former White House employees off of the lists. He wrote: "De-activate (sic) former staff . . ." ²⁶⁷ Mr. Livingstone, Marceca's supervisor, also was aware that it was the White House's responsibility to inform the Secret Service who to take off of their lists of active pass holders. In a March 1993 memorandum to Associate Counsel Bill Kennedy, Livingstone wrote:

Please note that there are many Bush Administration employees that still have active badges. USSS [U.S. Secret Service] informs me that it is WHS [White House Staff] responsibility to deactivate badges. I am working with

²⁵⁷ *Id.*, p. 46.

²⁵⁸ Marceca deposition, p. 83.

²⁵⁹ *Id.*, p. 60.

²⁶⁰ *Id.*, p. 153.

²⁶¹ *Id.*

²⁶² *Security of FBI Files* hearing, June 19, 1996, pp. 38–39. Mrs. Gemmell stayed on in the Clinton administration until August 13, 1993 to assist in training the new staff.

²⁶³ Anthony Marceca document (unnumbered). Handwritten notes of Anthony Marceca dated August 9, 1993.

²⁶⁴ Marceca deposition, p. 61.

²⁶⁵ *Security of FBI Files* hearing, June 19, 1996 p. 90.

²⁶⁶ *Id.*

²⁶⁷ Marceca document production (unnumbered). Handwritten notes dated August 9, 1993.

WHOMA [White House Office of Management and Administration] to begin this process.²⁶⁸

In his deposition, Marceca testified that he did not know what a Secret Service WAVES list was, nor did he know what a temporary pass holder or permanent pass holder list was.²⁶⁹ The Secret Service would provide the Office of Personnel Security with an updated passholders list on a monthly basis or upon request.²⁷⁰ When asked whether he had ever seen Secret Service lists which were separated by office, Marceca testified that he did not think that he had gotten any lists which were broken down by office until January 1994.²⁷¹ Nancy Gemmell stated that when she left the office in August 1993 she went to the Secret Service, and requested a current master Secret Service list separated by office.²⁷² This is the list which Gemmell left in the office with the understanding that an additional list should be requested:

Ms. GEMMELL. I was very much understood that the initial list the office had was just that, an initial list to be used to start the first steps of the Update Project. It was very well-known that many personnel decisions had yet to be made and therefore that follow-up would have to be done.

* * * * *

Mrs. COLLINS OF ILLINOIS. So then during the regular update projects in which you were involved, how often would you request a list of names from the Secret Service?

Ms. GEMMELL. Basically, only twice, ma'am. At the beginning to initiate the process, and then the second time to be used as the file copy.

Mrs. COLLINS OF ILLINOIS. Did you leave behind any Secret Service lists of names that you had requested for the Update Project when you left in August of 1993?

Ms. GEMMELL. The list that was received from the Secret Service was left behind. It was still in process; far from being completed; correct.²⁷³

Mr. Marceca testified that the only regular Secret Service lists which he knew of were weekly pass lists which he received from the Secret Service and used to complete his project. He stated that these lists contained only a small number of people who were on the access lists and needed to be contacted to fill out an SF-86.²⁷⁴

The Secret Service did not provide the office with "access lists" in the manner that Marceca used the term. The Secret Service lists are quite distinctive, as the paper is oversize, on green and white computer printout paper with perforated edges. The access lists to which Marceca refers are created by the Office of Personnel Security based on names provided by the Office of Management and Ad-

²⁶⁸ White House document CGE 053677. Although the memorandum is undated, the information contained within clearly indicates that it was created in March 1993.

²⁶⁹ *Id.*, pp. 94-95.

²⁷⁰ Wetzel deposition, p. 33.

²⁷¹ Marceca deposition, p. 98.

²⁷² Telephonic interview of Nancy Gemmell.

²⁷³ *Security of FBI Files* hearing, June 19, 1996, pp. 50-51.

²⁷⁴ *Id.*, p. 94.

ministration.²⁷⁵ In hearing testimony however, Marceca, stated specifically that he recalled working with the large, green and white computer printout lists.²⁷⁶ Contrary to his statement, in his own notes Marceca writes, “Mr. David Watkins, head of management and administration . . . monthly report submitted on passes.”²⁷⁷

Lisa Wetzl, a staff assistant in OPS, testified that when Marceca arrived he took over her duties of helping to correct and submit to the FBI the SF-86 for new employees.²⁷⁸ Ms. Wetzl explained that both she and Nancy Gemmell went through the process with him to make sure that he understood it.²⁷⁹

The duties which Marceca was to perform in OPS were rather amorphous. Mr. Marceca testified that, “I would work in the Office of Personnel Security doing updates of White House staff and visitors, people that had access.”²⁸⁰ Mr. Marceca testified that Livingstone was his supervisor;²⁸¹ however, Livingstone testified that he did not supervise Marceca. With regard to the Update Project, Livingstone testified, “I didn’t supervise this project.”²⁸² Mr. Livingstone stated, “I don’t believe that there was anything specific that Tony would have been required to talk to me specifically about. Certainly not in the form of projects.”²⁸³ According to Livingstone, nobody in the office was reporting to him on the activities of Marceca.²⁸⁴ It appears from Livingstone’s statements that Marceca had free reign to do whatever he wanted without consultation with actual staff.

Mr. Marceca, however, testified that he was assigned the Update Project by Livingstone.²⁸⁵ Livingstone, the Director of the office, has no clear recall as to who was assigned the project, who was working on the project at any given time, or who was supervising the project.²⁸⁶ Ultimately, Livingstone was in charge of all activities in that office, and Marceca was the individual assigned to work on the Update Project.

D. MARCECA BEGINS THE UPDATE PROJECT

1. Introduction

As discussed previously, when a new administration arrives at the White House, nearly all of the previous administration’s records are removed for storage in the Presidential archives.²⁸⁷

²⁷⁵ Denbo interview, September 4, 1996, p. 9.

²⁷⁶ Marceca deposition, p. 40.

²⁷⁷ Marceca document production (unnumbered). Handwritten notes dated August 9, 1993.

²⁷⁸ Wetzl deposition, pp. 20–21. (A.B. Culvahouse, Counsel to President Reagan, testified before the committee that during his tenure only the White House Counsel, his Deputy and the Director of the Security Office were authorized to review the SF-86 forms. *Security of FBI Files* hearing, June 19, 1996 p. 46.)

²⁷⁹ *Id.*, p. 21.

²⁸⁰ Marceca deposition, p. 59.

²⁸¹ *Id.*

²⁸² Livingstone deposition, p. 33.

²⁸³ *Id.*, p. 37.

²⁸⁴ *Id.*, p. 39.

²⁸⁵ Marceca deposition, June 18, 1996, p. 59.

²⁸⁶ Livingstone deposition, June 17, 1996, p. 33. (When asked who supervised the project Livingstone stated, “I believe Ms. Gemmell, Ms. Anderson, Ms. Wetzl and Mr. Marceca.” Ms. Gemmell had started the very first stages of the project before she retired. Ms. Wetzl began working on the project after she was promoted to Executive Assistant in late 1994, when she felt that she had enough authority to do so. See Wetzl deposition, p. 66. Ms. Anderson apparently never worked on the project at all.)

²⁸⁷ Prepared written statement of C. Boyden Gray, p. 6.

Those records would include the background investigations and paperwork which are stored in the Security Office. Therefore the records for all holdover employees must be recreated by ordering the background investigations from the FBI.

Marceca's task was to recreate these files, and he would spend some time each week working on the Update Project. The process to determine which files to order is simple. The Secret Service has lists of all current passholders which it provides to OPS. The Secret Service lists can be printed out in different formats, one of which is current passholders by office. Previous administrations would go down the lists office-by-office to determine who the holdovers were in each office. The staff would start with those offices which routinely would have the largest amount of holdovers, such as the General Services Administration and White House contractors. The White House Office would normally be saved for last as it would have the greatest turnover with the least amount of holdovers. (The White House Office includes those offices with mostly political appointees such as the Chief of Staff and Communications.)²⁸⁸ After determining who the holdovers were, the office would order those FBI background investigations.

Before leaving the White House, Nancy Gemmell had begun the very first stages of the Update Project:

Mr. SCHIFF. Can you describe what the Update Project that you were working on until August 13th was?

Ms. GEMMELL. Basically, again, sir, it was just simply setting up the very first stages of it, and basically, that means that you were making dummy files; in other words, file jackets that would be used down the road. So therefore you were typing file labels, you were typing subject files. As an example, if you were processing the General Services Administration employees, you would type a subject file for that group also.

Mr. SCHIFF. Did you have a way of dividing up the Secret Service files—that is, GSA group or White House group there or something like that?

Ms. GEMMELL. As I recall the list, sir, the list of employees was by category; in other words, was by office.²⁸⁹

At the time Marceca started in OPS Nancy Gemmell had already retired. Ms. Gemmell testified that she did not know whether Marceca used the list she had left behind, nor did she know who would be assuming the responsibility for the Update Project.²⁹⁰

2. Marceca's understanding of the Secret Service lists

Mr. Marceca stated that as part of the Update Project he was to refer to a list and open files on individuals who had access to the White House.²⁹¹ He explained that his mission was to open a file on each individual on the list and then request a previous background investigation from the FBI.²⁹² When asked whether Nancy

²⁸⁸ *Id.*

²⁸⁹ *Security of FBI Files* hearing, June 19, 1996, pp. 90–91.

²⁹⁰ *Security of FBI Files* hearing, June 19, 1996, p. 90.

²⁹¹ Marceca deposition, p. 61.

²⁹² *Id.*, p. 62.

Gemmell had ever instructed him to determine the accuracy of the status of the names on the list, Marceca answered:

My project was to establish—was establish a file that would perform a check to find out if these folks were still on staff or not on staff . . . The list that I was provided was a list to my understanding that everybody on that list had access.²⁹³

Mr. Marceca's answer is puzzling. In the first sentence, he states that he was to determine who remained on the White House staff; he then states that everyone on the list had access. Mr. Marceca claims to have worked from the same list throughout the Update Project²⁹⁴ and had discovered that certain individuals on that list were no longer granted access to the White House complex.²⁹⁵ Mr. Marceca's statements appear contradictory. It is unclear what Marceca actually knew about the Secret Service lists. We do know from his own handwritten notes that, in the course of processing the individual files, he would place all files of White House Office staff in orange folders, all Vice-Presidential Office staff in pink folders, all volunteer and intern files in red folders and all support staff (GSA) in blue folders.²⁹⁶

The master Secret Service list includes a combination of active and inactive passholders. The passholder names on the list, however, are clearly differentiated by "A" or "I," meaning active or inactive. According to the Secret Service, the only list which Marceca could have used to request all 476 of the names would be the master list.²⁹⁷ Mr. Marceca testified that he was under the impression that the "A" and "I" designation on the Secret Service lists stood for "access" and "intern."²⁹⁸ The list Marceca used also contains the date of birth on each passholder.²⁹⁹ If one were to accept Marceca's testimony regarding his belief that the letters stood for "access" and "intern," then it follows that Marceca also believed that he was ordering background files on holdover interns who were 30 to 70 years old, and who had interned during Reagan and Bush administrations.

Contrary to his already incredible testimony, the request forms Marceca sent to the FBI on these "interns," as in the case of Billy Dale, identified them not as interns, but as staff members.

3. Marceca's explanation of the Update Project

In a hearing before the committee, Marceca again clarified the procedures he employed in doing the Update Project. He stated in the hearing that he worked from a "set of computer lists" which were kept in the vault of OPS.³⁰⁰ He added that he attempted to go through the names on the list in the order in which they ap-

²⁹³ *Id.*, p. 66. (Later in the deposition Marceca is asked whether there came a time when he discovered that there were people who were not properly on those lists. Marceca answered, "Not to my knowledge, [to] the time I left, no." Marceca deposition, p. 73.)

²⁹⁴ *Id.*, p. 98.

²⁹⁵ *Id.*, p. 100.

²⁹⁶ Marceca document production. (Unnumbered.) Handwritten notes dated August 9, 1993.

²⁹⁷ See *infra* Section VII, for further clarification of the Secret Service lists.

²⁹⁸ Marceca deposition, June 18, 1996 p. 67.

²⁹⁹ *Security of FBI Files* hearing, June 26, 1996, p. 41.

³⁰⁰ *Security of FBI Files* hearing, June 26, 1996, p. 39. Mr. Marceca's hearing testimony is contrary to his deposition testimony in which he stated that he used only one list for the Update Project. Marceca deposition, p. 61.

peared.³⁰¹ For each name on the list he would prepare a file folder and type the request on a preprinted form addressed to the FBI Liaison requesting a “copy of previous report.”³⁰² On those forms is a space for the purpose of the request. In that space, Marceca typed “ACCESS (S).”³⁰³ That denoted that the individual named on the form was requesting access to the White House. The “S” was an internal OPS designation for White House staff.³⁰⁴

After receiving the previous report from the FBI, Marceca stated that he would review it to determine the suitability of the person for a position in the Clinton administration, and to check the date for the standard 5 year reinvestigation.³⁰⁵ In the process of determining the date of reinvestigation, Marceca claimed he would discover that many individuals were no longer employed by the White House.³⁰⁶ Once Marceca began receiving a number of files for individuals no longer working at the White House and not seeking access to the White House, he created a “dead bin” where he would put all of those files.³⁰⁷

Mr. Marceca also testified at the hearing about the “set” of lists which he worked from while he performed the Update Project. He described the list as being on green and white computer paper, approximately 8 inches wide which was folded over and had connecting pages.³⁰⁸ The list he worked off of was approximately an inch thick with the names of the individuals in the left hand column.³⁰⁹ During the hearing, Marceca recalled that the list was divided into subgroups according to office, which is contrary to his deposition testimony.³¹⁰

Mr. Marceca told the committee that he was told by Livingstone, and possibly others in the office, to work off of the list he had been using.³¹¹ Mr. Livingstone and Lisa Wetzl have both stated that they do not know which list Marceca was using for the Update Project. Nancy Gemmell has testified that she did not even know who would be working on the Update Project, therefore she did not give anyone a Secret Service list to use for the Update Project. In fact, she testified that she instructed the individuals working in the office that they would have to request an updated Secret Service list to complete the project.³¹²

Although Marceca stated in his deposition that he never knew that there might be any problems with the list he was using, he later stated in the committee hearing that he realized there were problems, causing him to change his method of updating the files:

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*, p. 41.

³⁰⁵ *Id.*, p. 39. This is the same task which, in previous administrations, only the counsel, deputy counsel and the director of the Security Office were authorized to conduct.

³⁰⁶ *Id.*, p. 40.

³⁰⁷ *Id.* The “dead bin” was a bin located in the vault which was empty at the time Marceca began his detail.

³⁰⁸ *Id.*, p. 40.

³⁰⁹ *Id.*

³¹⁰ *Id.*, p. 41. In his deposition testimony Marceca stated that he did not see any lists which were divided by office until January.

³¹¹ *Id.*, p. 106.

³¹² *Security of FBI Files* hearing, June 19, 1996, p. 50. Ms. Gemmell testified, “It was very much understood that the initial list the office had was just that, an initial list to be used to start the first steps of the Update Project. It was very well-known that many personnel decisions had yet to be made and therefore that follow-up would have to be done.”

Mr. FLANAGAN. You understood [the list] was current, and it turns out it wasn't. Was it fair to say it was an updated list?

Mr. MARCECA. No, sir. It is fair to say that I believed the list was current when I had that list. Later on it developed that there were people that had left the White House, when I started that project they had no reason to believe that list was outdated or that those people did not have access to the White House.

* * * * *

Mr. MARCECA. I believe I worked on that list until I discovered, and it was not a sudden discovery, but somewhere after a couple of months—well, it is being pointed out it was always the same list. When I discovered that there were problems with that list, I then changed my approach to updating.³¹³

There is no evidence to suggest that Marceca changed his approach to the Update Project. In fact, when asked why he stopped at “G-o” on the list, Marceca testified that was as far as he had gotten on the list.³¹⁴

Mr. Marceca explained his two goals as he proceeded down the list. First, he wished to determine that the individual was still at the White House, and second was to ensure that he “didn’t prevent them from coming into the White House in case of an emergency.”³¹⁵ His actions, however, contradict his stated goals. Mr. Marceca did not check whether an individual on the list was currently employed by the White House before ordering his file, otherwise he would not have received the files of over 400 individuals not currently employed by the White House. It is not clear what emergency he referred to when explaining his second goal. He did not have the ability to prevent a current passholder from entering the White House compound by conducting the Update Project. The only way to accomplish that would be to notify the Secret Service to deactivate the individual’s pass.

In his deposition before the committee, Marceca described two different procedures which he used for recreating the FBI background files of holdover employees. He first explained that he would work from the SF-86 form and then check the “update list” to determine if the name on the SF-86 were also on the list.

Answer. The very first thing I had to do was [take the SF-86] go into the vault, pull out this list that was in the vault, and check to see if the name was on the list. Which means, that if it was on the list, then they were former White House staffers. If their name was on the list, I would put a check beside their name . . . If they were not on the list, I would just continue on. . . . This is the update list in the safe.³¹⁶

³¹³ *Id.*, pp. 284–286. (In his deposition testimony Marceca directly contradicts this statement, when asked whether there came a time when he discovered that there were people who were not properly on those lists. Marceca answered, “Not to my knowledge, [to] the time I left, no.” Marceca deposition, p. 73.)

³¹⁴ *Id.*, p. 194.

³¹⁵ *Id.*, pp. 193–94.

³¹⁶ *Security of FBI Files* hearing, June 19, 1996, pp. 83–84.

He then stated that he worked off of the list, not the SF-86 form.³¹⁷ Mr. Marceca then clarified this apparent contradiction by explaining that after the project was not advancing as planned, he began to make lists of names from the "Update list" and systematically circulate those to offices in the White House.³¹⁸ Attached to Marceca's lists of names would be a request from Marceca asking whether any of the individuals listed were holdovers.³¹⁹

4. The "Dead Bin"

In the process of making these requests, Marceca would be informed by the various offices that certain individuals on Marceca's list had left the White House some time ago. Marceca explained:

In some cases those folks, the GSA [General Services Administration] would tell me this person is still here, but these people with GSA, two or three people with GSA left in '87 and they are no longer here. So I would go back to the file then and I would check off on the list and I would not call for an SBI because I knew they were not there.³²⁰

If Marceca had actually gone through the list in this manner, he would not have received any files of individuals who were not currently working in the White House. Instead, he had accumulated somewhere in the range of 500 files which he stashed in the "dead bin."

Marceca defined what he considered his "dead bin:"

That file that the update list sat in was where files were stored that were what I recall dead files, files of people who no longer worked at the White House. They went in that file. They went in that bin. If there was—if the name was not—if the person's name was not on file in that bin, that meant that I had to open a file. But before I opened a file, I checked into file drawers to find out if a file had already been opened. And if there was no file in the file drawer, I got a new file folder, and I opened a new file . . .³²¹

The so-called "dead bin" which Marceca created raises some very troubling questions. It is implausible that, after he received even one file for an individual who was not presently working at the White House, he did not raise any questions about the list which he was using. Apparently he did not question the list after receiving over 400 files of individuals who were not working at the White House.

Mr. Marceca was a career investigator, trained to ask questions and find answers. It is not plausible that Marceca would not be able to determine the reason so many names, with "Ts" next to them, no longer worked in the White House. Nor is it plausible that he was unaware of whose files he was requesting. When ques-

³¹⁷ Marceca deposition, p. 65. In his testimony during a committee hearing, Marceca testified that he worked from the list, not from SF-86 forms. *Security of FBI Files*, June 26, 1996, pp. 40-42.

³¹⁸ Marceca deposition, p. 99.

³¹⁹ *Id.*

³²⁰ *Id.*, p. 100.

³²¹ *Id.*, p. 64.

tioned why he requisitioned files on known prior Republican officials, Marceca responded that he had seen a high level Republican in the White House on one occasion. He therefore, did not question whether any other well known Republicans should be on the list as well.³²²

Mr. Livingstone was aware that Marceca was working on the Update Project, but claims that they did not have any conversations about the project: "I don't have a specific recollection of talking to anyone about when Tony started or if Tony was trained properly on it."³²³ Likewise, Ms. Wetzl, a staff assistant at the time, did not know what process Marceca was using to complete the Update Project.³²⁴

Mr. Marceca wrote memos to Livingstone to keep him up-to-date on the status of his projects,³²⁵ and he kept detailed lists of each previous report received from the FBI.³²⁶ Everyone who worked in the Office of Personnel Security, a one room office,³²⁷ testified that they knew Marceca was working on the Update Project, but never asked him about it.³²⁸

All prior employees of the one room Office of Personnel Security are unable to recall what Secret Service list Marceca used for the project, including Marceca.³²⁹ Ms. Wetzl, however, destroyed Ms. Gemmell's list, and testified she does not believe Marceca used it for the Update Project.³³⁰ Wetzl further stated, "Nancy had left all her stuff in one corner and I didn't believe that Tony had used any of that, that he had gotten a new list from the Secret Service and was working on that."³³¹ Ms. Wetzl, Livingstone's 24-year old Executive Assistant, made the decision to destroy the only possible clue as to why the files were improperly obtained.

³²² Marceca stated that one day he saw Marlin Fitzwater, Assistant to the President and Press Secretary for President Bush, in the White House complex.

³²³ Livingstone deposition, June 14, 1996, p. 54.

³²⁴ Wetzl deposition, p. 26. When asked to describe what she observed Marceca doing on the Update project, Wetzl answered, "I knew he was working on it, you know, and we were all in the same office so, you know, I would see him at his work station but **I really didn't get involved in the details of what he was doing.**" (Emphasis added).

³²⁵ Marceca document production, Bates Stamp Nos. 000096, 000155. In the first memo from Marceca to Livingstone, Marceca writes, "White House Staff; 50 Requests for Backgrounds were sent this week and the previous 3 weeks to FBI. 50 Requests for Backgrounds are awaiting to be sent next Monday to FBI. (We are at the 'D' with this project.) Next week; 1 Jan. 94, re investigation begins on GSA; AT&T; NSC; Credit Union; and "White House Staff, for BI's which expire in 1989." In the second memo, under Re-investigations of White House Staff, Marceca writes, "White House Staff Update: 43 Request for Previous backgrounds were this week. 50 each for the previous 5 weeks to FBI. 50 Request for backgrounds are awaiting to be sent next Monday to FBI. **250** Request for Previous Reports sent during this reporting period. (We are at the 'F' with the Staff Update Project.)"

³²⁶ Marceca document production, Bates Stamp Nos. 000004-000081. Lists created by Anthony Marceca dated from September 24, 1993 through February 10, 1994.

³²⁷ Livingstone deposition, June 14, 1996, p. 12. Mr. Livingstone was asked about the layout of OPS, he answered, "In 1993, it was one large room." All of the staff members of the office worked in the same room. *Id.*

³²⁸ See, Livingstone deposition, Wetzl deposition and Marceca deposition.

³²⁹ See, *Security of FBI Files* hearing, June 24, 1996, pp. 40-41. Mr. Marceca explains that he does not have a vivid recollection of the list which he used; Livingstone explained that he was not clear on the details of the Update Project; however, it appeared that whatever list Marceca was using caused the problem. *Id.*, pp. 30-33; Ms. Wetzl testified, "I saw that it was a Secret Service list . . . I didn't look at in detail, so I couldn't tell you what—which format this list was in." Wetzl deposition, p. 34.

³³⁰ *Security of FBI Files* hearing, June 24, 1996, p. 113. Wetzl stated, "I did not work with her list. **I threw it out.**"

³³¹ Wetzl deposition, p. 45.

5. Marceca's other duties

Committee documents show that Marceca's testimony of his responsibilities in the Office of Personnel Security was not comprehensive. Although he apparently did handle the processing of forms for background investigations, he provided additional services as well.³³² Marceca's memoranda to Livingstone show that he was assisting White House employees whose background investigations threatened their jobs. One Marceca memo entitled "Analysis of Personnel Background" contained the following:

1. Subject should first fire the attorney who wrote the letter, for the following reasons:
 - (a) The letter is combative and argumentative
 - (b) The letter does not offer explanations, but excuses
2. I suggest the following be included in a new letter:
 - (a) Subject has paid his/her dues to society, for past mistakes.

* * * * *

- (c) The shoplifting incident occurred because the subject needed money to buy food . . .

* * * * *

- (e) [I] am very sorry for the mistakes of my past . . . and I believe being fired is unfair and unreasonable.³³³

Why, as these documents suggest, did the Clinton administration employ Marceca to cleanse background problems for employees with criminal histories? How extensive was the problem of employees with background blemishes? Was Marceca hired specifically for that purpose? These questions raise further concerns about the approach taken by the Clinton administration toward security issues.

E. MARCECA'S DETAIL ENDS

1. White House attempts to extend Marceca's detail

Marceca's detail ended in February 1994. Livingstone and Kennedy had attempted to extend his detail;³³⁴ however, there were "unresolved issues" in his background which made Kennedy decide not to renew the detail.³³⁵ Livingstone testified he thought Marceca would have liked to continue his detail; however, he discussed these "unresolved issues" with Kennedy who made the final decision not to renew the detail.³³⁶ Mr. Kennedy explained:

Question. [W]e have been informed by the White House that [Marceca] did leave sometime in February of '94. Do you know why he was not retained at the White House?

³³² Among his other duties, Marceca's calendars show that on at least two occasions he was summoned by Counsel to the President Bernard Nussbaum's secretary to crack open Nussbaum's safe.

³³³ Marceca document production.

³³⁴ See, Wetzl deposition, p. 36. Ms. Wetzl was asked whether there were any attempts to re-detail Marceca to OPS. She answered, "I don't know. There was talk of it, but I'm not—I wasn't involved in it."

³³⁵ Livingstone deposition, June 14, 1996 p. 60.

³³⁶ *Id.*, pp. 60–61.

Answer. Well, I don't remember the timing involved. Okay? I simply do not know when things took place. But if I remember correctly, there were two things that sort of impacted this. One of which is that the White House, I don't believe, wanted to pick up paying for him. That's number one. Number two, Tony's background had come in and there were some problems revealed with it that made me think it might be better if he kind of went back to where he was.³³⁷

A White House document shows that Livingstone and Kennedy requested an extension of Marceca's detail on February 28, 1994.³³⁸ The request is on a non-reimbursable basis starting on February 28, 1994 and ending on June 27, 1994, with Marceca's duties outlined as assisting the Security Office with military adjudication. The form notes that reimbursement would start on April 11, 1994.

This document was signed by Kennedy after Marceca's original detail ended and after the problems in his background were discovered on December 17, 1993. On March 8, 1994, the White House Personnel Liaison contacted Livingstone asking, "Do you know the start date for Tony Marceca?"³³⁹ Mr. Marceca testified that he was unaware of any attempts to have him re-detailed to the White House.³⁴⁰ Messrs. Livingstone and Marceca did discuss the problems which were developed in Marceca's background investigation.³⁴¹ Even after Kennedy and Livingstone had received Marceca's background and knew there were suitability issues, they requested that he be redetailed. A March 17, 1994 letter, only recently produced to the committee, shows that Livingstone had requested, as late as March 3, 1994, a subsequent detail for Marceca. The March 17 letter respectfully withdrew the request. No explanation was given for the change of heart on Marceca working at the White House.³⁴²

Mr. Kennedy stated that the problems in Marceca's background were "not problems that would have led to a termination sort of on the spot."³⁴³ Although Kennedy refused to discuss the specific problems, Marceca did tell the committee that a woman had filed a private claim against him in Texas.³⁴⁴ Marceca testified during a deposition for a civil case he filed, that he was charged with official oppression for misuse of his office.³⁴⁵ In that case, Marceca had brought suit for slander against Justice of the Peace Lilly A. Stephenson, whom the FBI interviewed during Marceca's background investigation.³⁴⁶ Judge Stephenson met Marceca while he was

³³⁷ Kennedy deposition, June 18, 1996, p. 41.

³³⁸ White House production CGE 043810. The document is a form entitled "White House Office PERSONNEL FROM OTHER AGENCIES. It is signed by William H. Kennedy, III and dated February 28, 1994.

³³⁹ White House production CGE 054258. Message from Kelli McClure, White House Personnel Liaison for Management and Administration, to Craig Livingstone, dated March 8, 1994 at 3:40.

³⁴⁰ Marceca deposition, June 18, 1996, p. 150.

³⁴¹ *Id.*, pp. 151-52.

³⁴² Letter from Livingstone to Secretary of Defense Perry, dated 3/17/94; White House production 55749.

³⁴³ Kennedy deposition, June 18, 1996, p. 43.

³⁴⁴ Marceca deposition, p. 152.

³⁴⁵ *Marceca v. Stephenson*, No. A 94-CA-775-JN, p. 10 (W.D. Tx. filed Nov. 1994).

³⁴⁶ *See, Marceca v. Stephenson*, No. A 94-CA-775-JN, (W.D. Tx. filed Nov. 1994), deposition p. 10.

working for the Texas Attorney General's Office, Medicaid Fraud Division. During the FBI interview of Judge Stephenson, she stated, "I would not hire him [Marceca] to serve civil papers from my Justice of the Peace Office . . . he is nothing but a blow hard and [I] could not recommend him for a position of trust and confidence with the United States Government."³⁴⁷

2. Marceca does advance for the Clinton administration

After Marceca's detail ended he remained in close contact with Livingstone and volunteered at the White House. Before Marceca left the White House he had a meeting with Livingstone, Lisa Wetzl and Mari Anderson. In that meeting Marceca agreed to come in on successive Saturdays and work with the others to finish the Update Project.³⁴⁸ Mr. Marceca claimed that he never completed the project because he was sent on a detail to Canada by CID.³⁴⁹ Upon his return, he was named acting Special Agent in Charge of his Washington Fraud Team, and stated he "didn't have the time to do anything like that."³⁵⁰

Although Marceca did not have time to complete the Update Project, apparently he did have time to do advance work for the Clinton administration. On May 18, 1994, Marceca left a message for Livingstone about an advance trip: "He [Marceca] just got off a trip w/ Perry (Sec.) [Secretary of Defense William Perry]. He would [like] to talk to Craig about what he observed."³⁵¹ He had left a message for Livingstone earlier in the month stating that he, "cannot go on [the] trip to Normandy."³⁵² At the end of June 1994 Marceca left a message that, "[he] wants to go to lunch/ also wants to go on trip w/ you."³⁵³ Mr. Marceca appears to have continued to work on advance trips through 1995 and 1996, according to phone messages he left for Livingstone.

In January 1995, Marceca left Livingstone a cryptic message: "If you're going on 'that' trip, he'll see you are taken care of. Otherwise, he'll talk to you later."³⁵⁴ "That" trip was never identified in documents produced to the committee. Mr. Marceca called Livingstone in September 1995 to request assistance getting on the advance detail of a local trip.³⁵⁵ Likewise, in December Marceca asked Livingstone to schedule him for a trip in February or March 1996. Marceca stated that he would be willing to take 2 weeks leave to do a trip.³⁵⁶ These messages suggest that Marceca stayed

³⁴⁷ *Marceca v. Stephenson*, No. A 94-CA-775-JN, (W.D. Tx. filed Nov. 1994), deposition exhibit, FBI 302 dated October 29, 1993.

³⁴⁸ Marceca deposition, p. 153.

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ White House production CGE 054252. Message from Tony Marceca to Craig Livingstone, dated May 18, 1994 at 10:25 a.m.

³⁵² White House production CGE 054255. Message from Tony Marceca to Craig Livingstone, dated May 12, 1994 at 9 a.m.

³⁵³ White House production CGE 054254. Message from Tony Marceca to Craig Livingstone, dated June 28, 1994 at 9:05 a.m.

³⁵⁴ White House production CGE 054249. Message from Tony Marceca to Craig Livingstone, dated January 11, 1995 at 1:41 p.m.

³⁵⁵ White House production CGE 054265. Message from Tony Marceca to Craig Livingstone, dated September 13, 1995 at 10:43 a.m.

³⁵⁶ White House production CGE 054248. Message from Tony Marceca to Craig Livingstone, dated December 19, 1995 at 11:43.

in contact with Livingstone and participated in numerous advance trips for the administration.

Mr. Marceca also contacted Livingstone regarding issues with his FBI background investigation. Mr. Marceca visited Livingstone at the Office of Personnel Security on September 11, 1994. During that visit, Marceca reviewed his own FBI background file. He explained that Livingstone did not allow him to read it, rather he accidentally saw it:

Question. How did you happen to see the report?

Answer. I was visiting the White House and I was in Mr. Livingstone's office, and I pulled out a—We were in a conversation. He took a telephone call and turned his back, turned around to his desk. There was newspaper there. He was on the phone four or five minutes. And I reached up and pulled the newspaper out and background investigation spilled on the floor. I picked up the background investigations, and the last background investigation to pick up, put back in the stack, which happened to have been all rolled up, was my background investigation. I opened that up, and when I saw my name—and I saw—I briefly read what the FBI said. I turned a couple pages back, and I saw [Mrs. Stephenson], what she said . . .

I looked at what Mrs. Stephenson said briefly. I read that, and I flipped it back and I saw what Ms. Montag said.

Question. Okay. Now—

Answer. I then put the file back underneath the rest of the BI's and continued to read the newspaper until Mr. Livingstone rejoined the conversation.

* * * * *

Question. And so what you did when you picked up that report, opened it up and read it, you committed a criminal act, did you not?

* * * * *

Answer. No sir, I was cleared to look at background investigations.

Question. But not yours?

Answer. Sir, that was the fickle finger of fate that [report] would fall on the floor.

* * * * *

Question. Is that not a violation of your code of ethics?

Answer. I don't believe so, sir. It was an accidental discovery.³⁵⁷

After Marceca's "accidental discovery" of his FBI file during his visit to the Office of Personnel Security in September, he contacted Livingstone about the FBI again. On October 6, 1994 Marceca left a message for Livingstone stating, "Got a visit from the FBI."³⁵⁸ On December 16, 1994, Livingstone received a message from

³⁵⁷ *Marceca v. Stephenson*, No. A 94-CA-775-JN, (W.D. Tx. filed Nov. 1994), deposition of Anthony Marceca, February 20, 1995, pp. 114-17.

³⁵⁸ White House production CGE 054268. Message from Tony Marceca to Craig Livingstone, dated October 6, 1996 at 12:35.

“Marvin:” Will send over file on Marceca.³⁵⁹ No last name is indicated on the message; however, Marvin Krislov was an Associate Counsel to the President in December 1994. It is odd that Livingstone would have Marceca’s file sitting out on a table in the vault 8 months after his detail ended.

Mr. Marceca admitted under oath that he had read his own background investigation after he no longer worked in the Office of Personnel Security. The information which he read in his background file was the basis for the lawsuit he filed on November 14, 1994 against Judge Stephenson.³⁶⁰ Marceca’s actions exemplify why it is imperative that the Office of Personnel Security employ only individuals who are professional, circumspect and have demonstrated a sense of responsibility and discretion.

After learning more about the backgrounds of the individuals in control of the function of requesting FBI background files, it is all the more difficult to believe that the unauthorized ordering of hundreds of FBI files of prior Republican officials was an innocent mistake. Mr. Marceca’s explanations and excuses are not credible, and his actions merit more investigation.³⁶¹

IV. INITIAL DISCOVERY OF “TONY’S FILES”

Although the public did not learn of the White House’s unauthorized request of over 400 FBI background files until June 1996, White House employees knew about it since the fall of 1994. Lisa Wetzel, Livingstone’s 22 year old Executive Assistant, discovered “an awful lot of” extra files which Marceca had ordered while preparing to complete the Update Project.³⁶² There was a general understanding in the office that the bottom row of files in the vault, was “Tony’s row.”³⁶³ Ed Hughes, assistant in the Office of White House Security, explained that he questioned Wetzel about the files, “I think Lisa had explained that they were simply Tony’s files. They were files that she was not sure what they were doing there, but they were just kind of there, taking up space.”³⁶⁴

When Ms. Wetzel began looking through “Tony’s files,” she recognized that some of the files had been mistakenly ordered after identifying Marlin Fitzwater’s name.³⁶⁵ She knew that he did not work at the White House anymore.³⁶⁶ Ms. Wetzel told Livingstone about her discovery: “I said, ‘Craig, Tony ordered all these files of previous administration people that we don’t need.’”³⁶⁷ Ms. Wetzel

³⁵⁹ White House production CGE 054271. Message from “Marvin” to Craig Livingstone, dated December 16, 1994 at 11:42.

³⁶⁰ *Marceca v. Stephenson*, No. A 94–CA–775–JN, (W.D. Tx. filed Nov. 1994)

³⁶¹ Mr. Marceca’s own handwritten notes show that he was aware that he was responsible for instructing the Secret Service to deactivate prior administration staff. Marceca document production (unnumbered). Handwritten notes of Anthony Marceca, dated August 9, 1993.

³⁶² Wetzel deposition, pp. 41–43. Ms. Wetzel knew about the row of files which the office referred to as “Tony’s row” or “Tony’s files.” She was not aware that the files were of prior Republican administration officials until she began to review the files in the fall. *Id.*, p. 67.

³⁶³ Wetzel deposition, p. 65. Ms. Wetzel stated, “The row after row 15 was separate. That was Tony’s stuff, Tony’s project. We called it Tony’s row.”

³⁶⁴ Edward Hughes interview, August 13, 1996, p. 17.

³⁶⁵ Marlin Fitzwater was President Bush’s Press Secretary and Deputy Press Secretary to President Reagan.

³⁶⁶ Wetzel deposition, p. 43.

³⁶⁷ *Id.*, p. 63.

testified that Livingstone had no reaction to her statement, nor did he instruct her to do anything with the files.³⁶⁸

Mr. Livingstone testified that he knew that his office had requested Billy Dale's file within "the last year or possibly two." He also believed that he produced Dale's file to Associate White House Counsel Neil Eggleston in response to the GAO investigation of the Travel Office, which was completed on May 2, 1994. Mr. Livingstone admitted that he had read the contents of Billy Dale's file, but stated that it was in the course of responding to the GAO inquiry. Mr. Livingstone testified that he saw the request dated December 20, 1993 for Billy Dale's FBI report, at that time.³⁶⁹ Mr. Livingstone was therefore aware that Dale's file was requested 7 months after he was fired from the White House Travel Office.³⁷⁰

Ms. Wetzl set about her task of completing the Update Project, leaving the files in the vault so that she could refer to them if she discovered a name she might need.³⁷¹ She never consulted with anyone else nor did she ever contact the FBI regarding the files on former Reagan and Bush officials. According to Ms. Wetzl, the entire row of approximately 430 Republican FBI background investigation files in "Tony's row" simply remained in the office vault.

Sometime between December 1994 and February 1995, Wetzl boxed up the files and archived them with the Office of Records Management (ORM).³⁷² These boxes remained in ORM until ORM analyst Tom Taggart reviewed the documents in response to the committee's December 1995 request. Mr. Taggart notified Associate White House Counsel Natalie Williams that Billy Dale's FBI background file was among the documents archived by the Office of Personnel Security. Ms. Williams testified that she never reviewed the file or notified the committee that Billy Dale's FBI background investigation had been archived by Livingstone's office in December 1995.³⁷³ The document was not produced until May 30, 1996, under threat of a contempt vote against White House Counsel to the President, Jack Quinn.

A. LISA WETZL'S BACKGROUND

1. Ms. Wetzl, who had no experience, should not have assumed the amount of responsibility she undertook

Prior to the Clinton administration, Jane Dannenhauer, the former Director of the Office of Personnel Security, never allowed detailees from outside the White House or interns to work in the Security Office because of the sensitive nature of the files and paperwork.³⁷⁴ As with the majority of Livingstone's assistants, Lisa Wetzl came to the Office of Personnel Security as one of the first interns in June 1993 after graduating from college in May of the same year.³⁷⁵ Initially, Wetzl provided general office support, answering phones and typing forms.³⁷⁶ She quickly assumed the re-

³⁶⁸ Livingstone deposition, June 14, 1996, pp. 81-83.

³⁶⁹ *Id.*, p. 81.

³⁷⁰ *Id.*, pp. 81-83.

³⁷¹ Wetzl deposition, p. 66.

³⁷² Wetzl deposition, pp. 67-68.

³⁷³ Williams deposition, July 31, 1996, p. 24.

³⁷⁴ *Security of FBI Files* hearing, June 19, 1996 p. 81.

³⁷⁵ *Id.*, p. 7.

³⁷⁶ *Id.*, p. 10.

sponsibility of checking the Standard Form 86 (SF-86) for accuracy and notifying White House staff of any errors.³⁷⁷ Only 2 months later, Wetzl was hired as a full-time staff assistant in the office.

Ms. Wetzl testified that her responsibilities “didn’t significantly change except that I was now there for the long-term so I could, you know, really get to work on things that needed to get accomplished.”³⁷⁸ She continued to “help to correct and to submit to the FBI the Standard Form 86 for new employees.”³⁷⁹ Before Ms. Wetzl came to the White House, she had never even seen an SF-86, however, once Livingstone hired her, she was correcting them for the FBI.³⁸⁰

Ms. Wetzl testified that Nancy Gemmell, a holdover employee in the Office of Personnel Security, trained her to read SF-86 forms.³⁸¹ Ms. Gemmell, however, had never read an SF-86 before the Clinton administration took office.³⁸² Ms. Gemmell only recently learned the procedures to follow in checking an SF-86 for completeness. In prior administrations, only the Director of the office was permitted to review the FBI background files and SF-86 forms.³⁸³ Ms. Dannenhauer, however, was not retained on staff for a sufficient amount of time to train the new Director and employees, as she was during the transition from the Ford to Carter administration.³⁸⁴ Ms. Dannenhauer explained, “[Mr. Livingstone] was not there really long while I was there. I only worked with him probably part-time. He would come in and maybe be there a half a day . . .”³⁸⁵

Mr. Livingstone did not have the proper training necessary to run the Office of Personnel Security. He was certainly not capable of training his staff in procedures that he himself did not know. Without practical work experience or training, Ms. Wetzl should not have been placed in a position of decisionmaking in an office which handled sensitive information. The fact that nobody in the office even thought to return the improperly obtained files to the FBI shows the lack of knowledge required to work in the Office of Personnel Security. Mr. Livingstone testified that the reason he did not contact the FBI about the binful of files on prior Republican administration officials was, “We were never instructed to return materials back to the FBI.”³⁸⁶ Neither Livingstone nor Wetzl had the ability to think on their own and make the determination that a Democratic administration should not have hundreds of Republican administration files.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.*, p. 14.

³⁸⁰ *Id.*, p. 15. After Lisa Wetzl left the Office of Personnel Security, Jonathan Denbo, a recent college graduate, took over the responsibility of reviewing the SF-86 forms. Jonathan Denbo interview, September 4, 1996, p. 5.

³⁸¹ *Id.*

³⁸² *Security of FBI Files* hearing, June 19, 1996 p. 46.

³⁸³ *Id.*

³⁸⁴ *Id.*, p. 38. During the Ford/Carter transition, Ms. Dannenhauer and one of her assistants remained for 2½ months to train the new staff members and await a new Director, thereby ensuring a smooth transition.

³⁸⁵ *Id.*, p. 82.

³⁸⁶ *Security of FBI Files*, hearing, June 26, 1996 p. 138.

2. *Limited inquiry*

Ms. Wetzl's FBI background investigation was completed and the results were provided to the White House on September 3, 1993. For reasons unknown, the Counsel's Office did not submit her report to the Secret Service for adjudication until 7 months later, on April 11, 1994. She received her White House permanent pass shortly thereafter, on April 25, 1994. Mr. Livingstone requested CIA "compartmented clearance" for Ms. Wetzl and she received three clearances above the level of top secret in August 1994. The committee never received any explanation for these delays. Ms. Wetzl continued to work in the Office of Personnel Security throughout the year processing and correcting incoming SF-86 forms, processing pass requests and maintaining the weekly access and pass extension lists.³⁸⁷

On April 10, 1995, Livingstone notified the FBI of an "apparent discrepancy between information on Ms. Wetzl's Standard Form (SF) 86 and the information provided during her initial interview with the FBI Special Agent."³⁸⁸ Special Agent Gary Aldrich testified that he was the "lead agent on the Wetzl investigation." A "limited inquiry" was initiated by the FBI and the results provided to Craig Livingstone on May 26, 1995.³⁸⁹ FBI general counsel advised the committee that the reason for the "limited inquiry" was "a discrepancy regarding drug usage."³⁹⁰ Mr. Livingstone then asked the CIA to review Ms. Wetzl's new limited inquiry results, and her three CIA compartmented access clearances continued without further inquiry. Ms. Wetzl left the Office of Personnel Security in September 1995, to take the position as the Confidential Assistant to the Secretary of the Army, the Honorable Togo D. West, Jr.³⁹¹

The committee has not been able to determine, due to Livingstone's refusal to appear at a deposition, why Mr. Livingstone suddenly ordered a limited inquiry on Ms. Wetzl's "discrepancy" that had apparently been in her background for 18 months. During these 18 months, she had top secret and CIA clearances to review

³⁸⁷ White House document production, CGE 54939.

³⁸⁸ Letter from FBI general counsel, Howard Shapiro to Chairman Clinger, July 24, 1996.

³⁸⁹ White House document production, CGE 54392.

³⁹⁰ Deposition of Gary Aldrich, 7/18/96, p. 53. In response to committee questioning, Agent Aldrich described an instance in which:

There was a staff member who contended that the information on the FBI summary was incorrect. It was on a case that I completed, and communication was made to me first about this, I think. This individual worked in the Security Office. . . .

Well, there was a contention, about information that I had submitted, that the information contained in the report was incorrect. I was asked to—essentially, I was asked to go back and review this in the context that if I could—if I could see that it could be possible that it was incorrect, could I change it? This was spoken to me by Craig Livingstone.

I never had a request like this before, and so I went back to my—to the case file and I pulled the report. I reviewed whatever material was in the file that could help me make a determination. After I reviewed the material, I could not determine that I had made an error, and so I reported back to Mr. Livingstone that I had reviewed the material; I didn't think I made an error.

He then spoke to—either spoke to Jim Bourke or to Tom Renaghan or both about this, contending that the matter, in his opinion was not settled.

I was then contacted by my supervisor, Tom Renaghan, who asked me once again to review it. I reviewed it. I suggested to him that there was no change that I could make, and that is the—that was the end as far as I knew. I have since learned that an agent was directed to come to the White House to reinterview the person. . . . Agent Greg Schwarz. And I can't tell you what happened after that, but I do know that this person had since moved shortly thereafter to another agency. Aldrich deposition, pp. 68–69.

³⁹¹ Wetzl deposition, p. 8.

the most sensitive information, apparently without concern by the White House Counsel's Office. Then, 4 months before her departure to take on a position requiring the utmost confidentiality, Mr. Livingstone undertakes the review of her background to clear up the "drug usage discrepancy."³⁹²

B. LISA WETZL DISCOVERS "TONY'S FILES"

1. *Wetzel to complete "Update Project"*

Originally, Marceca planned to return to the White House and complete the Update Project with the assistance of others in the office.³⁹³ Mr. Marceca however, never completed the project and it fell by the wayside for close to 10 months until Lisa Wetzel took it upon herself to finish it.³⁹⁴ Ms. Wetzel did not feel comfortable undertaking the Update Project while she was only a staff assistant.³⁹⁵ She stated, "I started—when I was promoted to executive assistant is when I, you know, felt I could start this project on my own and get it over with, because I knew it had to be done. That was in the fall of '94."³⁹⁶

2. *Marlin Fitzwater, or too many files*

Once Wetzel looked into what Marceca had been working on, she realized that there were problems.³⁹⁷ She described what she discovered when she began looking through the bin in the vault which Marceca used:

Tony had separated his files from the rest of the files, I assume for easier access for him. I looked at those stacks of files and I—first thing I realized was that there were an awful lot of them, considering they were only A through G. And just working for the office—it had been a couple of years at least—I didn't think that there were that many holdovers.³⁹⁸

When Wetzel began looking through the names on the files, she realized that some of them were "mistakenly" requested.³⁹⁹ Ms. Wetzel recognized Marlin Fitzwater's name on a file and knew that he did not work at the White House anymore.⁴⁰⁰

Ms. Wetzel described her first reaction as that of exasperation when she realized that she would have to remedy the problem.⁴⁰¹ Ms. Wetzel never stated that she was alarmed or concerned that files had been ordered on individuals who were not seeking access to the White House.

Similarly, when Wetzel approached Livingstone about the unauthorized files, he had no marked reaction.⁴⁰² Ms. Wetzel testified that she told Livingstone that, "Tony ordered all these extra files,

³⁹² July 24, 1996 letter from Howard Shapiro to Chairman Clinger.

³⁹³ Marceca deposition, p. 153.

³⁹⁴ Wetzel deposition, p. 66.

³⁹⁵ Wetzel deposition, p. 66.

³⁹⁶ *Id.*

³⁹⁷ *Id.*, p. 41.

³⁹⁸ *Id.*

³⁹⁹ *Id.*, p. 43.

⁴⁰⁰ Wetzel deposition, p. 43.

⁴⁰¹ *Id.*

⁴⁰² *Id.*, p. 58.

what a pain.”⁴⁰³ The only thing she can remember Livingstone saying was, “Oh, Tony,” or a statement to that effect.⁴⁰⁴ Mr. Livingstone and Ms. Wetzl were the two most senior staff members in the office and neither of them found it notable that hundreds of files were ordered on prior administration officials, alleging that they had no idea that they ought to return the files.⁴⁰⁵ Mr. Livingstone described one situation where the office would return files to the FBI:

Sir, if I could be specific, often—not very often but often, we would get—for John D. Smith, we would get John S. Smith’s report sent to us by mistake by the FBI. Now, that we would send back to the FBI if we knew that we were requesting John D. Smith versus John S. Smith, assuming they had no business ever at the White House.⁴⁰⁶

Livingstone’s attempts to make a distinction between the FBI sending the wrong file and the White House requesting files improperly are in conflict. It is disingenuous for Livingstone to maintain that he believed that the two situations called for a different response.

C. THE “UPDATE PROJECT” IS REDONE BY LISA WETZL

1. Wetzl destroys the Secret Service list

Ms. Wetzl testified that upon discovering the unauthorized files ordered by Marceca she began to look around the vault for the materials which both Marceca and Nancy Gemmell used in the course of the Update Project.⁴⁰⁷ Ms. Wetzl found a list which she believed had been left by Nancy Gemmell, she explained, “I knew immediately that it was out of date. It was extremely long and appeared to contain hundreds of names from past administrations.”⁴⁰⁸ Ms. Wetzl proceeded to destroy that list, the only evidence which might have provided some explanation as to why all of these files were ordered.

Wetzl was questioned about why she would have destroyed the list in a hearing before the Senate Committee on the Judiciary:

Senator THOMPSON. All right, so it could have possibly been the same list that Mr. Marceca used to obtain all those improper files? Is it possible?

Ms. WETZL. Anything is possible, yes.

Senator THOMPSON. So you had the files there and you had the list there, the Gemmell list?

Ms. WETZL. Yes.

Senator THOMPSON. And you decided to destroy the Gemmell list, or put it in the burn bag. Is that correct?

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ Wetzl deposition, p. 59. Ms. Wetzl testified, “Nancy, like I said before, had briefly tried to explain to me before her impending departure how to do everything, and it was my understanding that we wanted to put in storage, it all had to go to Records Management; *Security of FBI Files* hearing, June 26, 1996, pp. 137–138. Mr. Livingstone testified, “Sir, I am glad you asked that question. The only information that I ever got—and I can’t speak for the rest of the people here, of course—the only information I ever got about what we were to do with FBI files was to safeguard them, ensure that they were remanded to Records Management at the end of the administration We were never instructed to return materials back to the FBI.”

⁴⁰⁶ *Security of FBI Files* hearing, June 26, 1996, p. 138.

⁴⁰⁷ *Security of FBI Files* hearing, June 26, 1996 p. 46.

⁴⁰⁸ *Security of FBI Files* hearing, June 26, 1996, pp. 46–47.

Ms. WETZL. Yes.

* * * * *

Senator THOMPSON. I guess I am just asking the question—you had these files, you saw them, you saw that there were many, many more than what was appropriate, and simultaneously you had a list that apparently had the same characteristics. It just occurs to me that you might have wanted to compare that list of the files to see whether or not you were holding a list of the files that you were going to have to be going through and working from, and that might have helped you determine what Tony had used to get those files.

Ms. WETZL. Well, at that point, I didn't really—the mistake had already been made. I didn't care what . . . Tony had done . . .

* * * * *

Senator THOMPSON. The decision as to what to put in the burn bag and what to archive—is that something that you were instructed on or something you made a decision on yourself?

Ms. WETZL. It was something I made a decision on myself.⁴⁰⁹

Although Wetzl testified that her understanding was that “all paperwork that we didn't need anymore that we wanted to put in storage, it all had to go to Records Management.”⁴¹⁰ The materials Marceca was using never went to Records Management. It was destroyed. With that act, Ms. Wetzl eliminated the only real evidence of exactly what Marceca had in his possession when he ordered the hundreds of files on prior Republican administration officials.

2. *Process by which the project is completed*

Ms. Wetzl testified that after she discovered Marceca's “extra files,” she proceeded with Project Update. She began working off of a list from the Secret Service “of pass-holders” and went through the list to identify names that no longer should have access to the White House complex.⁴¹¹ When Wetzl discovered a name of an individual that was no longer an active passholder, she notified the Secret Service to remove the name from the list. Ms. Wetzl also cross referenced her list with updated lists from supervisors of the departments within the White House complex.⁴¹² Because she thought all of the other lists were “hopelessly outdated,” she simply started over creating her own list.

Unlike her predecessor Mr. Marceca, Wetzl testified that she did not read the new Project Update files that she received for content.⁴¹³ She merely looked at the top of the first page to determine when the individual would need a 5-year reinvestigation and then “filed them.”

⁴⁰⁹ *White House Access to FBI Summaries: Hearings Before the Senate Committee on the Judiciary*, 104th Cong., 2d Sess., June 28, 1996 pp. 167–171.

⁴¹⁰ Deposition of Lisa Wetzl, p. 59.

⁴¹¹ Deposition of Lisa Wetzl, p. 53.

⁴¹² *Id.*

⁴¹³ *Id.*, p. 55.

3. *Extra files are boxed up and archived*

The group of files ordered by Marceca were gathered together by Wetzel sometime between December 1994 and February 1995. Ms. Wetzel testified that she “mentioned it” to Livingstone that files from the previous administration had been ordered and that she may have told him that “Marlin Fitzwater’s file is there.”⁴¹⁴

These files remained in the White House Security Office vault, separated from the other files for “a long period of time.” Ms. Wetzel explained that she left them in the office until she figured out “whose we needed and whose we didn’t.”⁴¹⁵ At some point, Wetzel placed all of “Tony’s files” in boxes to be taken to the archives. She typed up a list of the names of each individual whose file was placed in the box and took the boxes to the Office of Records Management located next door to the Office of Personnel Security. The files remained at the Office of Records Management until they were retrieved by White House Counsel Sally Paxton at the behest of Jane Sherburne on June 6, 1996.

V. WHITE HOUSE COUNSEL’S OFFICE DISCOVERY OF FBI FILES

A. BILLY DALE’S FILE

1. *Office of Records Management responds to subpoena*

On December 19, 1995, White House Special Counsel to the President, Jane Sherburne, Associate Counsel Natalie Williams and Special Associate Counsel Jonathan Yarowsky distributed a memorandum to selected White House staff regarding the committee’s request for certain documents relating to the White House Travel Office firings.⁴¹⁶ Shortly thereafter, Williams was notified by Tom Taggart, of the Office of Records Management, that in preparing documents for release to the committee, he had discovered the FBI background file of Billy Ray Dale.⁴¹⁷ In a hand-written note to his file dated December 27, 1995, and signed by Taggart, he memorialized his conversation with Williams regarding Billy Ray Dale’s FBI background investigation file:

Today, on 12/27/95, I notified Natalie Williams about Billy Dales FBI (retired) report (background check & vetting) that we received with other files from Craig Livingstone. She said that this file involved personal and personnel privacy issues—would not be sent to the Committee, nor would it be released. She is not interested in seeing file.

/s/ (Tom Taggart, Jr.)
12/27/1995⁴¹⁸

As the note makes clear, while both the White House Counsel’s Office and the Office of Records Management knew of the existence

⁴¹⁴ *Id.*, p. 63.

⁴¹⁵ *Id.*, p. 58.

⁴¹⁶ White House document production, CGE 42825–42827. The memorandum only asks for documents “created as of May 31, 1995” to be provided to the committee and provides a limited definition of the “White House Travel Office matter” for purposes of determining which documents are responsive.

⁴¹⁷ Natalie Williams deposition, p. 19.

⁴¹⁸ Handwritten memorandum of Tom Taggart, Jr., December 27, 1995, produced to the committee in a July 18, 1996 letter from Jane Sherburne to Chairman Clinger.

of Dale's background investigation file, neither had any intention of including it in the production of materials to the committee.

2. White House Counsel determines that FBI file is a personnel file

In a June 10, 1996 letter to Chairman Clinger, Jack Quinn alleged that he recalled telling the chairman during the meeting that "Billy Dale's personnel file" was among the group of personnel/vetting records being withheld by the White House at that time.⁴¹⁹ Mr. Quinn's statement is not true. The discussion revolved around David Watkins personnel file, a central figure in the Travel Office affair. The committee was never told that Billy Dale's file was among the files being withheld and certainly was not informed that the White House was withholding a December 1993 request for his FBI background investigation file. Moreover, Quinn never distinguished between a "personnel" file and an FBI background investigation file. These are very different files that seem to blend together in the White House's explanation.

Mr. Quinn's letter, however, evidences another contradiction. Although the letter states that he informed Chairman Clinger about the Billy Dale file at a February 15, 1996 meeting, Special Counsel Jane Sherburne deposition testimony conflicts with Quinn's statement. Ms. Sherburne testified that she did not even know about Billy Dale's FBI file until June 4, 1996.⁴²⁰ Ms. Sherburne attended the February 15 meeting with Quinn.

3. Natalie Williams passes on information to Wendy White

In an effort to keep documents from the committee, the White House conducted an extensive operation of reviewing documents in order to ensure that damaging information was not released. The White House Counsel's Office hired additional staff just to review, scrutinize, redact, and finally, produce documents the committee requested.⁴²¹

Wendy White was one of those hired to assist in the document review. Ms. White was hired as Special Associate Counsel in mid-February 1996 to assist with the production of materials to the committee. According to White, she learned of the Dale file as soon as she began work at the White House.

Shortly after I started, Natalie Williams, who had been working on the subpoena response, returned to private practice. Before she left, she provided me with certain information I needed in order to complete the production. During this transition period, she advised me that the Office of Records Management maintained a Billy Dale file responsive to the subpoena that should be retrieved from ORM if the committee and White House reached agreement that the file should be produced for *in camera* review or otherwise.⁴²²

⁴¹⁹Letter from Jack Quinn, Chief White House Counsel, to William F. Clinger, Jr., June 10, 1996.

⁴²⁰Deposition of Jane Sherburne, July 23, 1996 p. 71.

⁴²¹White House document DF 780643-654, task list created by Jane Sherburne.

⁴²²Statement of Wendy S. White concerning production of Billy Dale FBI file, July 18, 1996.

In several instances where the White House produced documents in partial compliance with the committee's subpoena, the Billy Dale file was not included.

4. *Wendy White's handling of Billy Dale file*

a. *May 21, 1996—orders the Dale file from OPS*

In early May 1996, after the committee was forced to hold Quinn in contempt, the White House decided to comply with the committee's subpoena of January 11, 1996. Responding to this action, the White House began to prepare documents for release to the committee. Ms. White wrote of this preparation of documents, "On May 21, 1996, I had the Office of Personnel Security retrieve the Billy Ray Dale file from the Office of Records Management. At my direction, the file was then copied and prepared for production."⁴²³ Ms. Sherburne wrote a July 18, 1996 letter to the chairman explaining that she and Ms. White had no discussions about a Billy Dale FBI background file; rather they discussed a personnel file.⁴²⁴ Ms. Sherburne's own letter makes clear that she understood there to be a difference between personnel files and FBI background files, and that she did not know of the Billy Dale FBI background file.⁴²⁵ The White House steadfastly maintains, however, that at the February 15, 1996 meeting they were discussing FBI background files, before Sherburne claims to have known of the Billy Dale file. White House Associate Counsel Natalie Williams also believes she likely told Sherburne about the Billy Dale file.⁴²⁶

White told the staff of the committee, "I gave the original file back to the Office of Personnel Security on May 23, 1996 to be returned to ORM. The White House produced the Billy Dale file to the committee, together with the other documents, on the morning of May 30, 1996."⁴²⁷

B. CHAIRMAN CLINGER'S JUNE 5, 1996 STATEMENT

1. *The committee receives 1,000 pages*

On May 30, 1996, the White House produced 1,000 documents to the committee in order to avoid a vote by the House of Representatives on the contempt citation against Quinn. That production included Dale's FBI background file and the memorandum from Bernard Nussbaum, then Counsel to the President, to the FBI liaison requesting the file. That was the first time the committee learned of the White House improperly requesting, maintaining, and withholding the FBI background file of Billy Ray Dale.

Investigators for the committee were reviewing the White House documents when they came upon memoranda of an extremely personal nature about Dale and his family. Affixed to these documents was a December 20, 1993 memorandum from Nussbaum to the FBI requesting a copy of a "previously requested report" for the background file of Billy Dale. Mr. Dale was dismissed from the White

⁴²³ Statement of Wendy S. White concerning production of Billy Dale FBI file, July 18, 1996.

⁴²⁴ July 18, 1996 letter from Special Counsel to the President Jane Sherburne to Chairman Clinger.

⁴²⁵ *Id.*

⁴²⁶ Williams deposition, p. 18.

⁴²⁷ Jane Sherburne letter, July 18, 1996.

House 7 months before the request, and had no need for White House access.

2. Chairman Clinger's statement on the Billy Dale file

Chairman Clinger first learned that the White House had obtained the FBI background file of Dale from the White House May 30, 1996 document production. He made no public statement on the matter until June 5, 1996.

At a press conference to express his outrage on this matter, Chairman Clinger released the memorandum from Nussbaum requesting the FBI background file of Billy Ray Dale. Chairman Clinger asked, "Can there be any legitimate reason why President Clinton's White House Counsel requested the confidential FBI background checks a full 7 months *after, I repeat after*, Billy Dale was fired and unjustly accused and smeared with allegations of wrongdoing? And yet, for a reason that has not yet been determined, the FBI complied with the request."⁴²⁸

Out of concern for the individuals whose privacy had been violated, Chairman Clinger took steps to commence a full investigation of the White House's improper actions in obtaining this and possibly other FBI background files.

VI. FBI INVOLVEMENT IN THE FILES MATTER

On June 5, 1996, Chairman Clinger telephoned FBI Director Louis Freeh upon discovery of the White House document requesting the background file of Billy Ray Dale. Chairman Clinger, in a press conference, notified the public of this event and released the request form, the document used by the White House to obtain FBI background investigations, from the White House.⁴²⁹ Director Freeh immediately sought a meeting with FBI General Counsel Howard M. Shapiro and Deputy General Counsel Tom Kelley.⁴³⁰ When he could not locate Shapiro, Freeh sought answers from Kelley on how background files of former White House employees could land in the White House.⁴³¹

A. DIRECTOR FREEH INITIATES INVESTIGATION

According to Kelley, Freeh showed him the document that Chairman Clinger released and asked Kelley to undertake an initial investigation of the White House request for Billy Ray Dale's file.⁴³² Kelley told the committee that "[the Director] asked me to come over and he explained to me that this release that Congressman Clinger had made, he showed me a copy of the document and he said he would like to determine how that could have happened, and dispatched me to find out."⁴³³

⁴²⁸ Statement of William F. Clinger, Jr., June 5, 1996.

⁴²⁹ The FBI file, itself, was never made public by the committee. However, before the White House finally released documents to the committee in compliance with the subpoena, it made many of the 1,000 pages of documents available to the press. The committee has been unable to ascertain whether sensitive, background information on Billy Dale was included in the materials made available to the press.

⁴³⁰ Kelley deposition, pp. 22-23

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ *Id.*

1. Tom Kelley's initial investigation

Kelley recognized the source of the document as the memorandum used by the White House to request an FBI background investigation and went to discuss the document with the Executive Agencies Sub-unit of the Information Resources Division at the FBI. Kelley spoke with SPIN Unit Chief Jim Bourke, as well as Jan George, and Formy Duvall, of the Executive Agencies Sub-unit of the Information Resources Division.⁴³⁴

David Kitchen, recently appointed Chief of the Executive Agencies Sub-unit, soon became involved in Kelley's inquiry. Mr. Kelley received the background file of Billy Dale from Bourke. Mr. Bourke had already retrieved the file, aware of the controversy surrounding it. Kelley soon learned that the file had been disseminated to the White House on January 6, 1994, in response to a December 20, 1993 request form.⁴³⁵ This was more than 2 years before the White House mentioned the file to the committee.

When background material is released to a Federal agency, it is reviewed by the FBI for information that should not be released. On the back of each page that is released, a stamp is marked indicating that information in the file, or the file, itself, has been released. In addition to the stamp, the date of the release and the initials of the analyst who reviewed the file for release among others, are added. Mr. Kelley noticed that "there were quite a series of [pages] that were transmitted."⁴³⁶

Mr. Kelley learned from Jan George that, instead of putting the White House request for the file in the file, itself, the FBI retained the form in separate files.⁴³⁷ The file of White House requests had been retained only for 1 to 2 years, in response to the growing number of files requested.⁴³⁸ No copies of the White House request forms had heretofore been retained.

Mr. Kelley reported to Director Freeh and General Counsel Shapiro that the file had been sent to the White House. Director Freeh instructed Shapiro to undertake a more extensive investigation into the matter and prepare to release the facts to the public. The Director asked that the report be made to the Director and to the Deputy Attorney General. The Director told Shapiro that the general counsel's office was the best place to conduct the investigation, because only then could the Director ensure that the investigation was done "properly and . . . swiftly."⁴³⁹

When he was first given the task of investigating the dissemination of FBI files, Shapiro asked Director Freeh if he thought that the Office of Professional Responsibility or Investigations Division

⁴³⁴ *Id.*, pp. 23–25.

⁴³⁵ *Id.*, pp. 23–25.

⁴³⁶ *Id.*, p. 27.

⁴³⁷ *Id.*

⁴³⁸ Howard M. Shapiro, *Report of the FBI General Counsel on the Dissemination of FBI File Information to the White House*, June 14, 1996, at charts tab 16. According to a report written by Shapiro, in the first year of the Clinton administration, the actual number of files requested by the White House was 10,197, more than 3 times the number requested the previous year by the Bush administration. The average number of files requested by the Clinton administration each month was 850, more than 3 times the monthly average of Bush administration requests.

⁴³⁹ Deposition of Howard M. Shapiro, July 30, 1996, p. 29.

should undertake the investigation. Director Freeh assured Shapiro that he should conduct the investigation.⁴⁴⁰

Generally, the Office of Professional Responsibility would investigate allegations of wrongdoing within the FBI. The FBI Office of Professional Responsibility investigates allegations of criminal or ethical misconduct by employees of the FBI. The FBI also has an Inspection Division. The Inspection Division is charged with ensuring that the FBI conducts its business according to the law and regulation.⁴⁴¹

In addition, the Department of Justice Inspector General would be available to investigate the circumstances surrounding the improper release of Billy Dale's file. The Inspector General enforces criminal and civil laws, regulations and ethical standards within the Department of Justice by investigating individuals and organizations who allegedly are involved in financial, contractual or criminal misconduct in Department of Justice programs and operations. Director Freeh did not believe that the Office of Professional Responsibility or the Department of Justice Inspector General were capable of conducting an investigation "properly" or "swiftly." He chose his friend, Howard Shapiro, to conduct the investigation.⁴⁴²

2. Howard Shapiro takes over the investigation

On the afternoon that Shapiro was instructed to undertake an investigation of the events surrounding the specious request by the White House of an already dismissed employee's FBI background file. Shapiro watched a video tape of Chairman Clinger's June 5 press conference on the discovery of the White House request for Billy Dale's FBI background file as a way to acquaint himself with the issues.⁴⁴³

According to Shapiro, Paul Cignoli, chief of the FBI's Civil Discovery Review Unit, took the initiative to determine whether or not the background files of other fired Travel Office employees had been disseminated to the White House.⁴⁴⁴ Shapiro learned that the background file of Brasseux had also been obtained by the White House. Shapiro advised Director Freeh of this fact and the Director advised Chairman Clinger.⁴⁴⁵

B. FBI REPORT

On June 14, 1996, the FBI released the *Report of the FBI General Counsel on the Dissemination of FBI File Information to the White House*. The report found that the White House had sought and received hundreds of FBI background investigations, "without justification." Director of the FBI Louis Freeh stated that the White House's actions constituted, "egregious violations of privacy."⁴⁴⁶

⁴⁴⁰ *Id.*, p. 29.

⁴⁴¹ Deposition of Thomas A. Kelley, pp. 43-44.

⁴⁴² Shapiro deposition, p. 28.

⁴⁴³ Shapiro deposition, p. 25.

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.*, p. 24.

⁴⁴⁶ Howard M. Shapiro, *Report of the FBI General Counsel on the Dissemination of FBI File Information to the White House*, June 14, 1996. Statement of Louis J. Freeh, Director, Federal Bureau of Investigation.

The report also summarized the previous practices that led to these violations. There was an unusually large number of requests for FBI background investigations from the White House. The FBI report recounts the dramatic increase in requests from the White House during the years 1993 through 1996.⁴⁴⁷ The rise in number of requests is attributed to several factors.⁴⁴⁸ At the end of each administration, all files are removed from the White House for placement in the Presidential library of the retiring President. Therefore, in order to reconstruct the files necessary to accommodate access for career civil servants in the White House, new administrations must obtain previous reports filed on those civil servants.

According to the FBI report, when an administration has a change in party, the number of files it must order is greater than when the preceding and succeeding parties are of the same political party. The FBI could provide no evidence that the change in political party of the administration produced a greater demand for background files than a change in administration within the same political party. Particularly since the request for files at issue were mostly of people in the political offices where there were very few holdovers, there should have been few requests for files of White House Office staff.

Director Freeh criticized the Clinton administration's abuse of the FBI in the accumulation of FBI background files. On the occasion of the release of the report, Freeh, promising to prevent future abuse, said:

The prior system of providing files to the White House relied on good faith and honor. Unfortunately, the FBI and I were victimized. I should have known before last week about a decades old system that failed. The FBI and I fell victim to my lack of vigilance, and this failure to exercise proper management controls also affected the privacy rights of many persons. I deeply regret those problems and pledge that they will not occur again on my watch. Like the report on which I based my comments, I have not reached any conclusions regarding the motivation of any White House employee.⁴⁴⁹

In response to Freeh's statement that the FBI was "victimized," White House Press Secretary Mike McCurry said, "I do not understand those statements. There has been no abuse of the information in the files."⁴⁵⁰ This statement came soon after the White House Chief of Staff, Leon Panetta, apologized on national television to the "hundreds of people . . . whose classified FBI personnel files were obtained by the Clinton administration and reviewed by an Army security officer."⁴⁵¹

⁴⁴⁷Howard M. Shapiro, *Report of the FBI General Counsel on the Dissemination of FBI File Information to the White House*, June 14, 1996. For statistical details of increase in file request from the Clinton administration, see *supra* at note 13.

⁴⁴⁸It is important to note that the Clinton administration underwent a much hailed 25 percent cut in White House staff. Therefore, the number of requests for current reports should have lessened the demand placed on the FBI's White House desk.

⁴⁴⁹Statement of Louis Freeh, Director, Federal Bureau of Investigation, June 14, 1996.

⁴⁵⁰Tim Weiner, *Request for Files "Victimized" FBI, It's Director Says*; New York Times, June 15, 1996.

⁴⁵¹McGrory, Boston Globe, June 10, 1996.

According to the FBI report, several offices in the White House can request a name check or a background investigation: the Executive Office of the President, the National Security Council, the Counsel to the President, or the Office of Personnel Security. The requests from the Office of Personnel Security, the office headed by D. Craig Livingstone, were sent under the name of the White House Counsel. No signature was affixed to the forms sent by the Office of Personnel Security.⁴⁵²

The report explains that the forms are picked up by an FBI courier and delivered to the Special Inquiry and General Background Investigations Unit of the FBI's Personnel Division. The forms that are the subject of this controversy sought "copies of previous reports." A request for a copy of a previous report is submitted to the Executive Agencies Sub-Unit of the Executive Agencies, Personnel and Administrative Support Unit of the Information Resources Division. That office has a staff of 36: 18 research analysts; 11 file assistants; and 7 clerks or typists.⁴⁵³ Two members of this staff are assigned to the "White House Desk."

When the White House Desk receives requests for previous reports, it obtains the FBI file number of the subject of the request. Once the file number is found, all background investigation files are obtained by the White House Desk. According to Shapiro's report, these files contain all raw data used to compile summaries and reports. To comply with a request for previous reports, the analyst first confirms that the files received are for the person for whom the White House has requested information. Then, the analyst determines what information to send to the White House. Memoranda, interviews, and other documents previously prepared in conjunction with the file are copied, as are any letters prepared for the previous transmittal of this information. The original documents that are copied are listed on a "pull card," and stamped on the back with the initials of the analyst on the back of the file. Then, the copies of the documents are sent to the White House with the original request.⁴⁵⁴

Those in the office managing the White House requests for background files saw a significant rise in the number of requests. Congresswoman Morella questioned Peggy Jean Larson, Supervisor of the Executive Agencies Dissemination Unit, Sub-unit, at the FBI.

Mrs. MORELLA. Did there come a time in late '93 and early '94 when you began to receive a large amount of requests for copies of previous reports?

Ms. LARSON. Yes, Ma'am.

Mrs. MORELLA. In your 32 years of experience with your unit, can you recall another instance when you received more than 400 requests for copies of reports within a 2- to 3-month period?

Ms. LARSON. Probably not within a 2- to 3-months period. It is not unusual that we would have received that many requests over a longer period of time, but I can't recall in that short period of time.

⁴⁵² Howard M. Shapiro, *Report of the FBI General Counsel on the Dissemination of FBI File Information to the White House*, June 14, 1996.

⁴⁵³ *Id.*, p. 16.

⁴⁵⁴ *Id.*, p. 18.

Mrs. MORELLA. Did you report the unusual number of requests to your supervisor?

Ms. LARSON. I made Mr. Thornton aware of the fact that we did have an increase in the number of request for prior backgrounds only. I only brought it to his attention because I was going to have to get some overtime. I believe it is in the record that one of my employees, her husband was ill and the other analyst was rather backed up.

Mrs. MORELLA. Did he indicate that he would follow up on this? I wondered what his response was.

Ms. LARSON. His response was, did I have enough help, and how much overtime did I need, and were there any problems. I said no, that just because of one of them being out, that the other analyst was in need of overtime. He said that was fine. But as far as the nature of the request, there was no problem with that.⁴⁵⁵

In his deposition, Bourke stated that those opening the requests would not recognize the names of people for whom background investigations had been requested.

Ms. OLSON. But anything that comes in with the first two boxes, previous report or name check, would go on to the Name Check Unit?

Mr. BOURKE. Correct.

Ms. OLSON. Regardless of who the individual is?

Mr. BOURKE. Correct. I mean, the people who open those packages wouldn't know James Baker from you, or me. Well, they would know him from me. They know me from him.⁴⁵⁶

People in that office, however, did recognize the name of James Baker.

Ms. REMINGTON. In late 1993, early 1994, would you know who James A. Baker was?

Ms. GEORGE. I remember when we got the name check in, Sherry Canter did it.

Ms. REMINGTON. Did she know who James Baker was?

Ms. GEORGE. Yes.⁴⁵⁷

It is clear that there were FBI officials who recognized the high number and unusual nature of the requests for background investigations coming in to the FBI, but they apparently relied upon the "good faith and honor" of the White House.

C. ATTORNEY GENERAL JANET RENO REFERS THE MATTER TO INDEPENDENT COUNSEL KENNETH W. STARR

Independent Counsel Kenneth Starr wrote to the Attorney General Janet Reno on June 18, 1996, stating his reservations about the Independent Counsel conducting the investigation of the dissemination of FBI files to the White House, because he felt his mandate lacked the scope.⁴⁵⁸ Mr. Starr had begun a preliminary

⁴⁵⁵ *Security of FBI Files* hearings, August 1, 1996, pp. 71–72.

⁴⁵⁶ Bourke deposition, pp. 24–25.

⁴⁵⁷ George deposition, p. 34.

⁴⁵⁸ Associated Press, *Reno Orders FBI File Probe*, June 19, 1996.

inquiry on the first day the Dale file became public. Mr. Starr had heretofore conducted the investigation into the White House firing of seven employees of the White House Travel Office. Mr. Starr sought evidence regarding the White House retrieval of Dale's file, because it was evidence that the White House sought damaging information with which to tarnish Dale's image.

On the same day that Starr wrote of his concerns to Reno, Shapiro was notified that he would be tasked with conducting a complete investigation of both FBI and White House involvement in this affair.⁴⁵⁹ At 9 a.m. on June 20, 1996, Attorney General Reno made a request to the U.S. District Court for the District of Columbia that the issue of the White House retrieval of FBI background investigations on former Bush and Reagan administration officials be added to the jurisdiction of the Independent Counsel.⁴⁶⁰

In her public statement, Reno said, "I have concluded that it would constitute a conflict of interest for the Department of Justice itself to investigate a matter involving an interaction between the White House and the FBI, a component of the Department of Justice. Therefore, I have decided today to seek an expansion of Mr. Starr's jurisdiction from the court, so that he may conduct that further investigation."⁴⁶¹

Once a matter is put within the jurisdiction of an Independent Counsel, it is then specifically outside the jurisdiction of the FBI. Title 28 of the U.S. Code, in § 597, states that "[w]henever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under § 594(e), the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter . . ." The FBI, as a bureau within the Department of Justice, is governed by this provision of the U.S. Code. The FBI should have suspended its investigation or any involvement in the FBI files investigation. Mr. Shapiro was clearly without any authority to investigate this matter.

D. FBI CONTACTS THE WHITE HOUSE AFTER RENO'S REFERRAL

As of June 20, 1996, the investigation of the release of FBI files to the White House was referred by Attorney General Reno to Independent Counsel Kenneth Starr. At that time, the only entities rightfully investigating the matter were the Independent Counsel and the Committee on Government Reform and Oversight.

1. *Freeh requests that Chairman Clinger review background investigations rather than question agents*

As part of its investigation, the committee sought to learn why personnel with largely political backgrounds were placed in sensitive positions in the White House Office of Personnel Security. Additional concerns were voiced regarding allegations of impropri-

⁴⁵⁹ Shapiro deposition, p. 120. Mr. Shapiro also testified that he met with the Office of Independent Counsel and received a briefing on the Independent Counsel's investigation.

⁴⁶⁰ Notification to the court pursuant to 28 U.S.C. § 592 (a)(1) of the initiation of a preliminary investigation and application to the court pursuant to 28 U.S.C § (c)(1) for the expansion of the jurisdiction of an Independent Counsel; June 21, 1996.

⁴⁶¹ Statement of Attorney General Janet Reno, June 20, 1996.

ety on the part of Livingstone and Marceca. The committee heard testimony regarding Livingstone's and Marceca's suitability for the positions they held.⁴⁶² The committee initially sought to interview those agents who conducted the background investigations of Livingstone and Marceca.

In a July 10, 1996 letter, Director Freeh wrote that he had "grave concerns about having line Agents subjected to congressional inquiry about specific investigations and I respectfully ask that your committee use other means to obtain the information needed for your inquiry."⁴⁶³ Freeh was concerned that such interviews conducted by a congressional committee could have a "chilling effect on the vigor with which our Agents conduct investigations."⁴⁶⁴ In the same letter, Freeh wrote, "I respectfully ask that you allow the FBI to provide [the background files] to you through knowledgeable managers or that the Committee pursue the underlying documentation."⁴⁶⁵

Chairman Clinger acceded to Director Freeh's request regarding the review of Livingstone's and Marceca's background files. Barbara Olson, chief investigative counsel, arranged to view the files at FBI headquarters. On July 15, 1996, FBI Congressional Affairs Director Margaret Owens spoke with Steve Colloton of the Independent Counsel's Office to ensure that the Independent Counsel had no objections to making the files available to the chairman and approved staff of the Committee on Government Reform and Oversight. Mr. Colloton said the office of the Independent Counsel had no objections to the release of the files to the committee.⁴⁶⁶

2. *Shapiro notifies White House Counsel's Office, whom he referred to as "affected parties," of potential incrimination Nussbaum's statement*

In preparation for that visit, Owens had the files retrieved. Paralegals in the Civil Discovery Review Unit analyzed the files, ostensibly to redact names of those in the files who had provided information on the condition of confidentiality. On July 15, 1996, Paul Cignoli, Chief of the Civil Discovery Review Unit, brought a document in Livingstone's file to the attention of Tom Kelley.⁴⁶⁷ Mr. Kelley realized its importance.

The document was a portion of a memorandum of an interview with Bernard Nussbaum. Nussbaum, the former Counsel to the President, was interviewed by Special Agent Sculimbrene in conjunction with the background investigation of Livingstone. In the memorandum of that interview, Sculimbrene wrote in March 1993:

Bernard Nussbaum, Counsel to the President, advised that he has known [Livingstone] for the period of time that he has been employed in the new administration. [Livingstone] had come highly recommended to him by HILLARY CLINTON, who has known his mother for a longer period of time. [Nussbaum] was confident that the appointee lives

⁴⁶² Reneghan deposition, pp. 62-65.

⁴⁶³ July 10, 1996 letter from Director Freeh to Chairman Clinger.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ July 29, 1996 interview of Howard M. Shapiro by the Senate Committee on the Judiciary.

⁴⁶⁷ Kelley deposition, pp. 85-86.

a circumspect life and was not aware of any illegal drug or alcohol problems. He said that the appointee will work at the White House on security matters. He said that in the short period of time that the appointee has worked for him he has been completely satisfied with his performance, conduct and productivity. He recommended the appointee for continued access in his current capacity.⁴⁶⁸

During hearings before the committee on June 26, 1996, witnesses, including Nussbaum, testified under oath that they did not know who was responsible for the hiring of Livingstone. Several members of the committee questioned the veracity of the witnesses. The exasperation of the committee is evidenced in the remarks of Congressman Christopher Shays of Connecticut. When the witnesses could not answer the question of who hired Livingstone, Shays declared, “You know what, anybody can tell you—there’s not a person in this room who doesn’t know who hired them for whatever job. It’s disingenuous for you guys to take so long [to answer the question].”⁴⁶⁹ Those reviewing the Livingstone file apparently were aware of the controversy surrounding the question of who hired Livingstone, because Cignoli informed Kelley immediately of the contents of the memorandum, and then Kelley immediately notified Shapiro.⁴⁷⁰

On July 15, 1996, Mr. Shapiro obtained a copy of the page from Livingstone’s file once he learned that its contents would be damaging to the White House.⁴⁷¹ He showed the copy to FBI Counsel Larry Parkinson.⁴⁷² He discussed the contents of the memorandum with Margaret Owens and John Collingwood, both of the Office of Public and Congressional Affairs. On that same day, he also spoke with Director Freeh about the controversial document. Mr. Shapiro read the incriminating sentence, that Livingstone “had come highly recommended to him by Hillary Clinton,” to Dennis Corrigan, Chief of Staff to the Deputy Attorney General at the Department of Justice, and informed Corrigan that he would call the White House with this information.⁴⁷³

Immediately after speaking with Corrigan, Shapiro telephoned the White House.⁴⁷⁴ Mr. Shapiro called for Quinn and learned that he was away from his office. Mr. Shapiro spoke with Quinn’s deputy, Kathleen Wallman.⁴⁷⁵ Ms. Wallman notified Special Counsel Jane Sherburne. In other words, almost 1 month after the Attorney General referred the matter to the Independent Counsel, Shapiro relayed information uncovered in an investigation of the FBI files

⁴⁶⁸ Special Agent Dennis Sculimbene, memorandum of interviews conducted between March 1, 1993 and March 3, 1993. The memorandum includes descriptions of interviews of Lori Stallings, Supervisory Personnel Assistant in the White House; Bernard Nussbaum, Counsel to the President; and William Holden Kennedy, III, Associate Counsel to the President. Mr. Kennedy sought assurances from Sculimbene that any recommendation Kennedy made regarding Livingstone was made “on the short period of time that he has known [Livingstone].” Kennedy also mentioned to Sculimbene that Livingstone sought the position of head of the White House Military Office.

⁴⁶⁹ *Security of FBI Background Files* hearings, June 26, 1996, p. 170.

⁴⁷⁰ Interview of Howard Shapiro; U.S. Senate, Committee on the Judiciary; July 29, 1996, p. 11.

⁴⁷¹ Shapiro deposition, pp. 63–64.

⁴⁷² *Id.*

⁴⁷³ Interview of Howard Shapiro; U.S. Senate, Committee on the Judiciary; July 29, 1996, p. 17.

⁴⁷⁴ *Id.*, p. 12.

⁴⁷⁵ *Id.*, p. 12.

matter to the White House, the subject of that investigation. Shapiro recounted his conversation with the White House in a deposition before the committee:

Answer. [I]n preparing the documents for [Chairman Clinger's committee to review], my staff had identified a page that I thought would be of interest to them because it related to a matter that had already been the subject of substantial controversy. And I read to her that single sentence of the paragraph summarizing the interview of Bernard Nussbaum. And she asked me in what form it appeared. And I described that it was a page that had three paragraphs relating to interviews about three different people conducted over a couple-day period. Again, I read to her that sentence.

Question. Did you tell her that it appeared that it had been—the interviews had occurred from March 1 to 3, 1993?

Answer. I believe I did. I am not entirely certain but I think I did. I lost my train of thought for a second.

I told her—well, she asked me what limitations, if any, would there be on the committee's use of that information or further dissemination of it. And I said, you know, I didn't purport to be an expert or a scholar on matters like that; that the Privacy Act did not apply to the Committee as such and that I did not think there would be legal restrictions, or I was aware of no legal restrictions and that it would be used at the discretion of the committee chairman.

Question. And just so the record is clear, the sentence that you read to her verbatim was the sentence that [Livingstone] had come highly recommended by Hillary Clinton?

Answer. Yes.

Question. Who has known [Livingstone's] mother for a longer period of time?

Answer. Yes.

Question. So you contacted the White House before anyone on this committee ever saw that document; is that correct?

Answer. Well, as it turns out. The intent was for it to be essentially contemporaneous, but yes.⁴⁷⁶

Chairman Clinger was alarmed to learn that the White House, the target of the ongoing investigations, had reviewed the documents before he had. In a statement to the public on August 1, 1996, Clinger said, "No one from the FBI called me to read me a verbatim account of the Nussbaum notes. Apparently no one at the FBI read a verbatim account of these notes to anyone at the Independent Counsel's Office. I did not review the file personally until July 18, 1996. I would note the White House and over a dozen present and former staff obtained the information in Nussbaum's

⁴⁷⁶ Shapiro deposition, pp. 104–106.

interview prior to my having reviewed the file.”⁴⁷⁷ Clinger listed numerous people in the White House who were notified immediately of the contents of Livingstone’s file.

a. Sherburne’s telephone tree

Several witnesses have testified before the committee as to the number of people involved in discussions about the Nussbaum interview as relayed by Shapiro. After Shapiro notified the White House on July 15, communications within the White House and outside the White House ensued immediately.

Once Jane Sherburne was notified of the controversial and damaging contents of Livingstone’s file, realizing the importance of the damaging information, she made it a point to spread the word about the file to a large number of people on that day. Ms. Sherburne recounted the exact manner in which she contacted people in a deposition before the committee.

Question. Did you discuss [the information relayed by the FBI] with anyone else in the White House?

Answer. Yes.

Question. Who did you discuss it with?

Answer. Well, I would have discussed it with my team, with **Kathy Wallman**, with **Evelyn Lieberman**, and **Harold Ickes**; perhaps others, but that would have been the core group.

Question. Who on your team—

Answer. And **Jack Quinn** as well.

Question. Who on your team did you discuss it with?

Answer. Certainly **Mark Fabiani**, **Sally Paxton**, and **John Yarowsky**. Possibly others, but those would have been the primary ones.

Question. And did these discussions occur on Tuesday after you had received your call from the FBI?

Answer. They would have been Tuesday or Wednesday.⁴⁷⁸

The members of the White House staff that were informed by Sherburne of the incriminating information allowed them to prepare answers to questions that were sure to come at the release of this information. More importantly, perhaps, was the fact that Sherburne sought out Mrs. Clinton to relay this information.

Question. Do you know if anyone has discussed it with **Mrs. Clinton**?

Answer. Yes.

Question. And who is that that discussed it with her?

Answer. I did.

Question. And when did you discuss it with her?

Answer. It would have been Tuesday or Wednesday. [July 16 or 17, 1996]⁴⁷⁹

Sherburne continued to list the people she notified of the information contained in Livingstone’s file.

⁴⁷⁷ Statement of William F. Clinger, Jr., chairman, Committee on Government Reform and Oversight, August 1, 1996.

⁴⁷⁸ Sherburne deposition, pp. 222–223.

⁴⁷⁹ *Id.*

Question. Have you had any discussions of this with anyone outside of the White House other than your attorney?

Answer. Yes.

Question. And who was that?

Answer. **David Cohen, Jim Fitzpatrick, Larry Pedowitz.**

Question. Jim Fitzpatrick who is representing **Bernie Nussbaum**?

Answer. That's right. And I'm trying to remember if I spoke to **Randy Turk** about it. I may have.

Question. Were you aware that Bernie Nussbaum was going to go into a grand jury appearance shortly after you had your conversations with his attorney?

Answer. No.⁴⁸⁰

Ms. Sherburne contacted people in and outside the White House. Those in the White House contacted by Sherburne included officials in the White House Counsel's Office and the Chief of Staff's Office. Kathleen Wallman is the Deputy Counsel to the President. Evelyn Lieberman is the Assistant to the President and Deputy Chief of Staff for White House Operations. Harold Ickes is the Assistant to the President and Deputy Chief of Staff. Mark Fabiani, Sally Paxton, and John Yarowsky are Special Associate Counsels to the President.

Once she had notified officials within the White House, Sherburne began to contact lawyers for different individuals who were the subjects of a variety of investigations into the White House Travel Office and the FBI files controversy. Sherburne contacted David Cohen, a lawyer with Miller, Cassidy, LaRocca & Lewin, who represents Craig Livingstone. She contacted Jim Fitzpatrick, a lawyer with the firm of Arnold and Porter, and Larry Pedowitz, a lawyer with Watchell, Lipton and Associates, both of whom represent Bernard Nussbaum. The subjects of the investigation into the FBI files matter were privy to the machinations of the investigation, itself.

In a hearing before the committee, members expressed dismay at the level of closeness between the White House and the FBI. In his questioning of Shapiro, Congressman Stephen Horn made clear the nature of his concerns:

Mr. Shapiro, I will tell you what makes me very curious. You are a very bright young man, you are obviously very sophisticated, you have conducted a major prosecution, and suddenly you get some information, and you pick up the phone and call the White House. Did you want to curry favor with them . . . ?⁴⁸¹

Shapiro once again denied the impropriety of informing the White House of information uncovered in an investigation of the White House. Horn continued:

What bothers me is that with Mr. Freeh coming in, we were assured that the FBI would be independent. Then we have the Vincent Foster press release bit, and it looks like

⁴⁸⁰ *Id.*

⁴⁸¹ *Security of FBI Files* hearings, August 1, 1996, pp. 93-94.

the FBI is trying to curry favor with the White House. I don't think the FBI should curry favor with anybody. I think they should be independent, call them as they see them, but they shouldn't be playing one side where they are giving them all the cues as to what is in the file, and it bothers me that that has occurred on several occasions.⁴⁸²

2. *Shapiro dispatches agents to interrogate Sculimbrene*

In addition to notifying the White House about details of the committee's investigation, Shapiro sent two agents to interrogate Agent Sculimbrene at his home early on July 16.⁴⁸³ Agent Sculimbrene interviewed Bernard Nussbaum in the course of preparing Livingstone's background investigation, and recorded Mrs. Clinton's involvement with Mr. Livingstone. Because some at the White House had questioned Agent Sculimbrene's information, Shapiro claims that he wanted to confront Sculimbrene with the discrepancies.⁴⁸⁴ FBI Agents searched Sculimbrene's work station and papers that day.

Shapiro and Kelley made the decision to send Duncan Wainwright, an Assistant Inspector, and Special Agent Jennifer Esposito to interview Sculimbrene. Inspector Wainwright had been assigned to work with Shapiro on the FBI files investigation. Special Agent Esposito, the wife of William J. Esposito, Deputy Assistant Director of Financial Crimes, Public Corruption, Civil Rights, and Operational Support, was sent because, according to Shapiro, she was "from [Wainwright's] squad."⁴⁸⁵

Inspector Wainwright telephoned Agent Sculimbrene to inform him of Shapiro's intent to send agents to Sculimbrene's home on that day to interview him. Agents Wainwright and Esposito arrived at Sculimbrene's home at approximately 11 a.m. on July 16, 1996.

Sculimbrene reviewed the memorandum in question and said that it appeared to be written by him. Although Sculimbrene could not remember the precise interview with Nussbaum, he described the process by which he recorded his interviews. Sculimbrene performed thousands of interviews in the normal course of his work at the White House. The memorandum written by Esposito and Wainwright describes their interview with Sculimbrene:

SA [Special Agent] Sculimbrene stated that his interview report should accurately summarize Nussbaum's comments concerning Livingstone. He noted that he took pride in his work and sought to make his reports accurate and complete. SA Sculimbrene noted that it was his general practice to prepare his interview reports on the same day that an interview took place. He followed this practice because it caused him to prepare his reports while the information was fresh in his memory.⁴⁸⁶

⁴⁸² *Id.*

⁴⁸³ Shapiro deposition, pp. 70–71.

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*, p. 72.

⁴⁸⁶ Supervisory Special Agent Duncan J. Wainwright and Special Agent Jennifer Esposito, Federal Bureau of Investigation 302 Interview of Special Agent M. Dennis Sculimbrene, Washington, DC, July 16, 1996.

In addition to recounting the procedures he used to record interviews, Sculimbrene stated that he did recall a significant fact regarding Livingstone. Agents Wainwright and Esposito wrote that, "SA Sculimbrene does recall being told by Livingstone that Livingstone's mother was a friend of Hillary Clinton."⁴⁸⁷ Clearly, the information from this interview buttresses the information found in Sculimbrene's original memorandum of the interview of Nussbaum.

In his statement regarding Shapiro's actions surrounding the improper contacts with the White House, Chairman Clinger said:

On July 16 there was another unusual occurrence. Two senior headquarter FBI agents appeared at the home of FBI agent Dennis Sculimbrene to talk with him about this interview of Bernard Nussbaum and ask for his notes of the interview. According to Mr. Shapiro, this action was taken at his direction and without any consultation with the Independent Counsel. Why after the Attorney General had clearly stated that these matters would be handled by the Independent Counsel because they presented a conflict of interest for the Justice Department and the FBI, did Mr. Shapiro take this disturbing action?⁴⁸⁸

This action perpetuated the feeling among members of the committee that the FBI was wrongly involved in protecting the White House. The FBI wasted resources to hide the embarrassing facts contained in Sculimbrene's memorandum. Some saw the FBI's tactics as heavy handed. Regarding the choice of agents to conduct the interview, Congressman Horn engaged in the following colloquy:

Mr. HORN. Who picked the particular agents that interviewed Mr. Sculimbrene?

Mr. KELLEY. I did.

Mr. HORN. How did you happen to pick them?

Mr. KELLEY. Actually, the one I picked was Duncan Wainwright. I picked Duncan Wainwright for several reasons. First, he used to work for me, and he is very steady and reliable and intelligent.

Mr. HORN. How about the second agent?

Mr. KELLEY. May I finish? The second agent was picked by Duncan Wainwright.

Mr. HORN. Did one of the agents have a spouse who worked for the FBI?

Mr. KELLEY. Yes.

Mr. HORN. And what did that spouse do?

Mr. KELLEY. The spouse is the assistant director of the Criminal Investigative Division.

Mr. HORN. A fairly high position in the FBI.

Mr. KELLEY. Yes, it is.

Mr. HORN. Now, if somebody with that relationship showed up on my doorstep, and I am an FBI special agent, as Mr. Sculimbrene was, I would worry that somebody is

⁴⁸⁷ *Id.*

⁴⁸⁸ Statment of William F. Clinger, Jr., chairman, Committee on Government Reform and Oversight, U.S. House of Representatives, August 1, 1996.

after me, wouldn't you? Don't you think that is intimidation?⁴⁸⁹

Members of the committee were concerned with the mere fact that the interview took place, and that it was done after the entire investigation had been turned over to the Independent Counsel. The committee was equally concerned about the way the interview was conducted. Agents telephoned Sculimbrene, told him they were on their way, and soon arrived at his home to conduct the interview.

3. Shapiro made his own assessment that the matter was not within Independent Counsel Starr's jurisdiction

The initial discovery of the information in the Nussbaum interview resulted from Shapiro's staff reviewing files for release to this committee. The files that were reviewed were those of the two figures central to the FBI files investigation being conducted by the committee and the Independent Counsel. The committee's review came at the suggestion of Director Freeh, who was well aware of both the committee's investigation of the FBI files matter and that these files were requested in that matter. Nonetheless, despite overwhelming evidence to the contrary, Shapiro claimed not to know the purpose of the committee's request for these files.

In an appearance before the committee, Shapiro testified that he did not believe that the contents of the Nussbaum interview were related to the FBI files investigation. Chairman Clinger asked Shapiro if he knew the Attorney General had referred the "filegate" matter to the Independent Counsel in response to concerns that any such investigation might provide a conflict of interest for the FBI. Shapiro responded that he was aware of the referral. However, Shapiro testified that he "did not think that this information specifically was at the time part of the Independent Counsel's investigation."⁴⁹⁰ Steven Schiff, vice chairman of the committee, attempted to clarify the matter. Responding to Schiff's question about whether he thought "that Mr. Livingstone's hiring was related to the matters to be investigated by the Independent Counsel," Shapiro replied,

My misunderstanding, if I had one, was whether the question of how Craig Livingstone came to be hired was a matter within the scope of the criminal investigation of the Independent Counsel's Office looking into what I understood to be the criminal investigation, was the request for and acquisition of the FBI files.⁴⁹¹

The qualifications of Livingstone for a position in the White House Office of Personnel Security and whether he was placed there for political purposes is central to any investigation of the White House's improper retrieval of FBI files. According to Shapiro, he did not see the relevance of how Livingstone got his job to that investigation. Members of the committee did not believe that Shapiro could see the need to relay this information to the White House, yet not see the bearing it had on the investigations being con-

⁴⁸⁹ *Security of FBI Files* hearings, August 1, 1996, pp. 91–92.

⁴⁹⁰ *Security of FBI Files* hearings, August 1, 1996, p. 46.

⁴⁹¹ *Id.*, p. 82.

ducted. In a hearing before the committee, Congressman Burton said:

Let me get this straight here. The people you did not advise about this were the Independent Counsel, the Senate Judiciary Committee, or the members of this committee before you advised the White House Counsel, the Deputy Attorney General's office, who has a lot of liaison and connection with the White House. It's widely known that since Mr. Hubbell left the Justice Department, Ms. Gorelick, the Deputy AG, has the most intimate relationship with the White House, both political and otherwise. If you step back and look at the results of your decisions to notify the White House and the Justice Department, the Democrats who needed to perform damage control were made aware but the Republicans and the Independent Counsel investigating the matter knew much later. So we gave the people who were trying to defend themselves a heads up first.⁴⁹²

Many members of the committee were angered over Shapiro's statements that the hiring of Livingstone was not related to the White House retrieval of FBI background files.

Soon after Shapiro notified the White House about the contents in the memorandum of Mr. Nussbaum's interview, private lawyers were notified about that information. It was reported that Mr. Nussbaum was to testify before the Independent Counsel shortly after learning of this information. Showing concern for this series of events, Congressman Gilman posed the following question to Shapiro at the committee's hearing.

In your opinion, how should the Department of Justice react if a representative of the FBI, on his own, shares FBI information with an outside party that bears on the party's possible testimony or other derogatory information or leads that would assist that party in thwarting the government's inquiry? How do you think the Justice Department should react to that kind of statement?⁴⁹³

Shapiro responded that "if the Department thinks that someone at the FBI is interfering with an investigation, it is a matter they should take very seriously."⁴⁹⁴ Later in that hearing, Congressman Gilman asked Shapiro, "[W]asn't there an ongoing grand jury inquiry on the files and on Livingstone at the time you made your telephone calls?"⁴⁹⁵ Shapiro replied, "There—well, I'm obviously not fully aware of what inquiries there are. I understand that the Independent Counsel's office was conducting and is conducting a grand jury investigation into what—into the request for and acquisition of FBI files by the White House."⁴⁹⁶ The fact that Shapiro, a former prosecutor with the U.S. attorney's office, took actions

⁴⁹² *Id.*, pp. 157–158.

⁴⁹³ *Id.*, p. 113.

⁴⁹⁴ *Id.*

⁴⁹⁵ *Security of FBI Files* hearings, p. 114.

⁴⁹⁶ *Id.*, p. 115.

that may have interfered with an ongoing investigation is simply unacceptable for the FBI's top lawyer.

4. *Nussbaum's criminal referral*

Shapiro knew the clear significance of the information in the FBI background file, which contained contemporaneous notes of an interview of Nussbaum. Nussbaum relayed information about Livingstone to FBI Agent Sculimbrene in March 1993, at a time when Nussbaum had no reason to be dishonest. In addition, Agent Sculimbrene had no reason to attribute any significance to Nussbaum's comments.

Shapiro knew of the controversy surrounding the hiring of Craig Livingstone, which developed in June 1996. In his deposition before the Committee on Government Reform and Oversight, Shapiro first hypothesized about why his staff would have alerted him to the contents of the memorandum in question. Shapiro said:

[I]t was brought to my attention because it referred to a matter which had already been the subject of much public controversy and many articles in the newspapers and on—stories on television about the allegation that there was a connection between Hillary Clinton and the hiring of Craig Livingstone; more specifically, that Hillary Clinton was a friend of Craig Livingstone's mother and had recommended for the job.⁴⁹⁷

In the same interview, Shapiro gave his reason for alerting the White House to this information. He said, "Knowing that was a matter which had already been a matter of considerable public controversy . . . I decided that it was appropriate to advise the White House."⁴⁹⁸

At the June 26, 1996 hearing before the Committee on Government Reform and Oversight, "Security of FBI Background Files," none of the witnesses, including Craig Livingstone, could remember who hired Craig Livingstone. In that hearing, Chairman Clinger asked Bernard Nussbaum, Counsel to the President, "Do you know who hired Craig Livingstone?"⁴⁹⁹ Nussbaum replied, "I don't know who brought Mr. Livingstone into the White House." Later, following Kennedy's statement that he "never discussed Mr. Livingstone with Mrs. Clinton in any way, shape or form," Nussbaum said, "Nor did I."⁵⁰⁰ Several other witnesses denied knowing who hired Livingstone.

At that hearing, Nussbaum was under oath. He swore to tell the truth. He was the White House Counsel while Livingstone was Director of White House Security. Livingstone worked for Nussbaum. When he professed not to know who hired Craig Livingstone, committee members were perplexed. When Chairman Clinger discovered a contemporaneous memorandum written by an FBI agent that shed some light on who hired Livingstone, he was alarmed. Chairman Clinger was disappointed to learn that the document quoted Nussbaum as saying that Livingstone "had come highly rec-

⁴⁹⁷ Shapiro deposition, p. 59.

⁴⁹⁸ *Id.*

⁴⁹⁹ *Security of FBI Files* hearings, June 26, 1996, p. 57.

⁵⁰⁰ *Id.*

ommended to him by Hillary Clinton.”⁵⁰¹ Accordingly, this information “calls into question Mr. Nussbaum’s June 26, 1996 statements made under oath before the Government Reform and Oversight Committee.”

Upon discovering this information, Chairman Clinger believed that it warranted the attention of every Member of the House of Representatives and the American people. He stood on the floor of the House chamber and described the events surrounding the Sculmbrene memorandum. Calling this “a very serious issue,” Chairman Clinger concluded his statement, saying, “This is a matter I will refer to the U.S. Attorney for the District of Columbia. Because Attorney General Reno has designated Independent Counsel Kenneth Starr to investigate potential criminal wrongdoing in the White House Travel Office and FBI Files matters, I am simultaneously forwarding this matter to Judge Starr’s attention.”⁵⁰²

On July 30, 1996, the matter of Nussbaum’s statements to the FBI and before the Committee on Government Reform and Oversight was referred to the Office of the Independent Counsel and the U.S. attorney for the District of Columbia. Chairman Clinger and other members of the Committee on Government Reform and Oversight wrote to Independent Counsel Kenneth Starr and U.S. Attorney Eric H. Holder, Jr., to refer the matter to their offices.⁵⁰³

5. Shapiro edits letter for White House Counsel that is critical of Chairman Clinger

Upon the announcement that Chairman Clinger was making a criminal referral of Bernard Nussbaum, Quinn called Shapiro to request his assistance in writing a letter to Director Freeh. Shapiro testified about this matter in his deposition:

Ms. OLSON. The day of Chairman Clinger’s referral or the day of Chairman Clinger’s Floor statement about the statements by Mr. Nussbaum and the statement that he had read in the file, did you have any conversations with the White House?

Mr. SHAPIRO. Yes, I was called that day by Jack Quinn and Kathleen Wallman—this is prior to the chairman’s Floor speech—advised by them that they had learned from press, who I think they told me had a copy of his speech, that he was going to be making a Floor speech, and they told me that they were writing a letter.

I think what they said is, “The White House is writing a letter to the FBI director,” and they wanted to ask me a couple questions about it, primarily was there anything in the tone of it that we would find offensive that would—that they would sort of be unaware, would hit somebody the wrong way at the FBI, that they would unintentionally offend somebody about.

Ms. OLSON. You mean by the tone of—the tone of the letter?

⁵⁰¹ Sculmbrene memo contained in the FBI background file of Craig Livingstone.

⁵⁰² Congressional Record, July 25, 1996, pp. H8520–H8521

⁵⁰³ Letter to the Honorable Kenneth W. Starr, Independent Counsel, from Chairman Clinger and members of the Committee on Government Reform and Oversight; July 30, 1996.

Mr. SHAPIRO. The letter. They weren't asking me for my opinion on Mr. Clinger's speech. And also whether I had an opinion on who that letter should come from, from the White House.

Ms. OLSON. And so they faxed you a copy of the letter?

Mr. SHAPIRO. No. They read me some language. I told them that as to most of it, I had no opinion and didn't think it was appropriate for me to comment, which is not to say I had no opinion, but didn't think it appropriate for me to comment.

They highlighted one sentence that was in one draft one way and one in the other, and I concurred with their apparent decision that they already were telling me that in the second statement would be taken as less of an accusation against the FBI, and I said—and as to the question about who was appropriate to come from, I asked Jack Quinn, was he suggesting—I believe he asked me, did I think it more appropriate that it come from Leon Panetta? and I said, "If your question is, are you a sufficiently high level Government official to write to the director of the FBI? I think you shouldn't worry about that."

Ms. OLSON. And what was the one sentence?

Mr. SHAPIRO. Let me look at the letter as it was sent, and I might be able to tell you.

In the letter as sent, which we received some time later that evening—first time I had actually seen it—it says—after the first three paragraphs, it says: That is why we are troubled, as we know you must be, by the implication that an FBI background investigation might include a false report.⁵⁰⁴

In the letter that finally went to Freeh, and was released to the public, Quinn wrote:

It is equally troubling that a Member of Congress can publicly reveal confidential information, whether for partisan purposes or otherwise. It should not escape notice that this is done at a time when Members of Congress have expressed worry that employees of the executive branch might have sought out confidential FBI information about certain individuals and planned to somehow use it publicly. While that charge has never been established against anyone in the executive branch, we now witness the same objectionable behavior by the very people who professed to be the guardians of privacy.⁵⁰⁵

The general counsel of the FBI edited a letter for the White House that was harshly critical of the chairman of the Committee on Government Reform and Oversight, who was performing his oversight duties. Shapiro's actions raise questions about the independence of the FBI.

Members of the committee were particularly angered by the participation of the FBI in editing a letter critical of the chairman of

⁵⁰⁴ Shapiro deposition, p. 150.

⁵⁰⁵ Letter from White House Counsel Jack Quinn to FBI Director Louis Freeh, July 25, 1996.

a congressional committee. Congresswoman Ros-Lehtinen confronted Shapiro about his participation in the drafting of the letter from Quinn to Director Freeh. When Shapiro was trying to belittle his cooperation with the White House regarding the letter, Ros-Lehtinen said:

Based on your testimony, you said that you conversed with this gentleman, talked about who the letter should go to, talked about the tone, and I would say that you had a very direct hand in the drafting of this document.⁵⁰⁶

Congressman Souder told Shapiro he was wrong in editing the letter. He said:

You said you helped edit a letter for the White House Counsel which attacked both our Chairman and your own FBI agents. Now you say it wasn't editing, you were consulted. Almost any definition of "editing," you had the opportunity to edit. You say you made changes. By most definitions, that is editing, and it was a political letter which you should have withdrawn from.⁵⁰⁷

VII. POLITICIZATION OF THE FBI

The FBI serves as the principal investigative arm of the Department of Justice and as such, is charged with gathering and reporting facts, locating witnesses, and compiling evidence in cases involving Federal jurisdiction. The FBI investigates all violations of Federal law except those that have been assigned by legislative enactment or otherwise to another Federal agency.

In response to the politicization of the FBI during the Nixon administration, the Congress passed a law giving the Director of the FBI a fixed term. Public Law 90-351, provided that:

(b) Effective with respect to any individual appointment by the President, by and with the advice and consent of the Senate, after June 1, 1973, the term of service of the Director of the Federal Bureau of Investigation shall be ten years. A Director may not serve more than one ten-year term.⁵⁰⁸

On the Floor of the Senate, Senator Robert C. Byrd spoke in support of limiting the term of the Director of the FBI and about the importance of FBI independence. Senator Byrd said, "This amendment would aid in insulating the FBI Director against politically motivated manipulation from the executive branch by giving the office a tenure of 10 years." Senator Byrd reasoned that:

A 10-year term is desirable because it would generally overlap the tenure of a two-term President and would eliminate many of the pressures that could be brought to bear on the Director if he were to be reappointed every 4 years. In this way, the Director can be more effectively insulated from political pressures liable to be placed on him

⁵⁰⁶ *Security of FBI Files* hearings, August 1, 1996, p. 137.

⁵⁰⁷ *Security of FBI Files* hearings, August 1, 1996, pp. 176-177.

⁵⁰⁸ Pub.L. 90-351, Title VI, § 1101, June 19, 1968, 82 Stat. 236, as amended by Pub. L. 94-503, Title II, § 203, October 15, 1976, 90 Stat. 2427.

by a President and he will not be considered a politically oriented member of the President's 'team.'"

After Watergate, the Congress was wary of the President's political influence over the Nation's police force. It sought a way to remove the Director of the FBI and the FBI, itself, from political involvement.

When Louis Freeh was appointed by President Clinton in 1993, he immediately took steps to change the internal structure of the FBI. He eliminated two associate deputy directors and four dozen management positions. Perhaps his most controversial move involved the appointment of his closest aides. An article in the Los Angeles Times reported about some dissension in the FBI ranks about Freeh's appointments:⁵⁰⁹

Some of the controversy emanates from Freeh's appointment of a triumvirate of federal prosecutors he knew when he served in the U.S. attorney's office in Manhattan. He named Robert B. Buckham, 43, chief of staff; Howard M. Shapiro, 34, is the FBI's first general counsel, and Buckham's brother, James R., 32, heads up the new office for ending interagency turf fights. "He may be relying too heavily on the views of a certain group of friends, including their estimates of other people in the organization, creating a clique," worries a former senior Justice Department official.⁵¹⁰

Howard Shapiro met Director Freeh right out of Yale Law School when he first began his clerkship for Judge Leval and Director Freeh was appearing before the Judge as an assistant U.S. attorney in a major case in his career known as the "pizza connection" case.⁵¹¹ Mr. Shapiro testified that the "unusually close relationship" they developed during the course of this case led to Freeh requesting he come to work at the U.S. attorney's office in New York. Mr. Shapiro testified that he believed that Director Freeh "assisted him in being selected for the job."⁵¹²

Director Freeh again tapped Mr. Shapiro to join him on a "special assignment by the Attorney General" to investigate and prosecute the December 1989 tragic mail bombing case that killed Judge Robert Vance. They worked closely throughout the course of this case until Director Freeh was sworn in as a Federal district court judge. Mr. Shapiro left the U.S. attorney's office and accepted a teaching position at Cornell Law School but managed to stay in contact with then-Judge Freeh.

When Director Freeh was first asked by President Clinton if he would accept the position of Director of the FBI in the summer of 1993, he sought the advice of Howard Shapiro.⁵¹³ Mr. Shapiro testified that he "urged him to take the job and encouraged him to do

⁵⁰⁹ Ronald J. Ostrow, *Freeh Reign He's Eliminated Red Tape and Senior Posts, Given Agents More Power and Fewer Desk Jobs, Promoted International Cooperation and His Friends—In Just 17 Months, Louis Freeh has Made a Mark on the FBI as Indelible as J. Edgar Hoover's*, the Los Angeles Times Magazine, Sunday, February 5, 1995.

⁵¹⁰ *Id.*

⁵¹¹ Deposition of Howard Shapiro, 7/30/96, p. 10.

⁵¹² *Id.*, p. 11.

⁵¹³ *Id.*, p. 12.

so.”⁵¹⁴ In return, Director Freeh told Shapiro that he “expected” him to “come down and work for him” at the FBI to which Shapiro agreed and took leave from his teaching position at Cornell. Because Director Freeh had not yet formally created the office of the general counsel and first had to move out the current FBI career legal counsel, Shapiro began working for Director Freeh as his “special counsel” for 2 to 3 months.⁵¹⁵

After the retirement of the previous legal counsel, Shapiro began to “recreate” the Office of the General Counsel and immediately brought two deputies that work with his at the U.S. attorney’s office. Mr. Shapiro testified that he and Director Freeh believed these outside attorneys “could improve the overall quality of the office” since only career FBI agents had been allowed in these positions before. Mr. Shapiro, deriding their experience, stated that in the past the Bureau tended to promote individuals “based on their prediction of who would be the best agent.”⁵¹⁶ Mr. Shapiro immediately stopped this practice however, and filled the office with former colleagues of his and the Director’s.

As revelations of numerous contacts between FBI General Counsel Shapiro and the White House materialized, concerns about the politicization of the FBI have resurfaced. We learned that Shapiro had his own White House pass allowing him to come and go as he pleased in the White House complex.⁵¹⁷ Director Freeh’s appointment of close friends rather than “the best agent” is at the center of this problem. No longer does the top lawyer for the FBI have an allegiance to the law enforcement agency whose laws he has taken an oath to uphold. Instead the relationships created within the Office of the General Counsel created allegiances to the Director and his allegiances to the White House that gave him his appointment.

Shapiro has protested any political savvy, testifying that he has had only non-political, career, Department of Justice appointments,⁵¹⁸ and that he would therefore not have any political issues in mind when in contact with the White House.⁵¹⁹ Given the great attention paid by the public, the media and the Congress to past indiscretions by the FBI in its contacts with the White House, Shapiro should have been ever aware of the political consequences of his actions. Instead of protestations that he was not “competent” to commit a political act,⁵²⁰ Shapiro owed his agency and the public to be especially vigilant in his conduct, in matters involving the

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*, p. 13. Mr. Shapiro described this as a “somewhat delicate personnel matter” that Director Freeh had to move out the current Assistant Director who served as the Director of the Office of Legal Counsel Division before Shapiro could “replace” him. Then Assistant Director Joe Davis thereafter retired from the FBI after a long and distinguished career with the Bureau.

⁵¹⁶ *Id.*, p. 15.

⁵¹⁷ Director Freeh sent a letter on May 25, 1994 to Craig Livingstone requesting that Shapiro receive a permanent OGA White House pass. Director Freeh cited the numerous meetings Shapiro attends at the White House complex: “no fewer than 14 meetings within the White House gates, including a meeting with the President” over the past month. We believe that no other FBI legal advisor or general counsel has required such access to the White House complex in the past.

⁵¹⁸ This is not a credible statement, given that Shapiro was a professor at Cornell University before taking a leave of absence to work for his mentor and good friend, Louis Freeh. Shapiro is an SES employee appointed by Director Freeh as a result of his appointment by the Clinton White House.

⁵¹⁹ Shapiro deposition, p. 125.

⁵²⁰ *Security of the FBI Files*, hearing, August 1, 1996, p. 33.

White House, an inherently political entity. The years that Shapiro spent in law enforcement deny him such flimsy excuses.

A. GENERAL COUNSEL OF THE FBI HAND DELIVERS GARY ALDRICH
BOOK TO WHITE HOUSE COUNSEL

As a condition of employment at the FBI, agents must sign a contract by which they agree to obtain clearance before publishing information which they gain during their duties at the FBI. When an agent or former agent seeks to publish information gained while in the employ of the FBI, he must first submit the information he seeks to publish to the FBI for its review. Offices within the FBI who are affected by the written materials are asked to review the contents and decide whether its publication would jeopardize the functions of the FBI. While the review is to be completed in 30 days,⁵²¹ records supplied to the committee by the Department of Justice show that the process of review by the FBI took almost 6 months.⁵²²

Former FBI agent Gary Aldrich had written a book about his service in the FBI and in the White House. He submitted a draft of his book to the FBI for its review. Once Shapiro had a copy of Aldrich's manuscript, he waited less than a month to hand deliver a copy to White House Counsel to the President, Jack Quinn.⁵²³ To date, the White House has refused to reveal what it did with the book prior to its publication.

1. Justifications

Shapiro's justification for his "heads up" to the White House regarding Bernard Nussbaum's 1993 interview that linked the First Lady to Craig Livingstone's hiring, was that the White House was an "affected party."⁵²⁴ He did not, either in deposition or hearing testimony, ever indicate the Federal Bureau of Investigation rule or policy he was adhering to by his conduct. Thus, the true purpose of his action has not fully been explained. Similarly, while inquiring into the reason for his White House delivery of the Aldrich book, Shapiro was asked in committee deposition if he "communicated the substance of [the Aldrich] book [to the White House] because they were an interested party?"⁵²⁵ Shapiro replied, "Yep." But, in hearings before the committee 2 days later, he gave a more rehearsed response for the media.

In his opening statement before the committee hearings, Shapiro gave a more lengthy explanation for his distribution of the Aldrich manuscript.

The first draft of the book was replete with sensitive internal White House information that went to their internal procedures and went to White House security matters, as well as to the—directly to the result of his conduct of his

⁵²¹Letter to Mr. Jay Stephens, attorney for Agent Gary Aldrich; January 4, 1996. OPCA maintains liaison with the authors of the submitted manuscripts—and formally advises them, within 30 working days, whether, or under what conditions, approval for publication is granted (as per responses from the substantive agencies).

⁵²²Letter to Howard Shapiro, general counsel of the FBI, from Lisa Kate Osofsky, deputy general counsel of the FBI, July 31, 1996.

⁵²³Shapiro deposition, July 30, 1996, p. 82.

⁵²⁴Letter from Shapiro to Chairman Clinger, July 19, 1996.

⁵²⁵Shapiro deposition, p. 88.

official business. I delivered a copy of that to the White House Counsel's Office because, as I in fact somewhat presciently advised them, I could not ensure, the FBI could not ensure that Mr. Aldrich would not go forward and publish that book prior to receiving clearance, and in fact that is what he did.⁵²⁶

Congressman Burton attempted to obtain a more detailed explanation from Shapiro about why he delivered the book to the White House. Congressman Burton asked:

Question. What were they doing [with the book]?"

Answer. I knew that Mr. Aldrich could publish that document, as he did, without waiting for our approval, without—without concurring with our objections, and that they should know and have it in their hands before internal White House procedures were disseminated to the world.⁵²⁷

First, it is implausible that, in February of this year, Shapiro anticipated that Aldrich would consider publishing his book without FBI concurrence, when Aldrich had adhered to FBI policies in submitting the book for review. Furthermore, it strains credulity to believe that Shapiro delivered the book to Quinn out of concern about White House security. Why would Shapiro go directly to the White House Counsel's Office, which has become a public relations/political entity for the President, rather than the U.S. Secret Service, whose central mission is to protect the security of the President and the White House complex?

In addition to the "security review" being conducted by the White House, the FBI was also conducting a review in accordance with the employment agreement signed by Aldrich upon his employment. Records obtained by the committee show that the FBI had extensive consultation with Jay Stephens, former U.S. attorney, and counsel for Aldrich, regarding the prepublication review of the manuscript by the FBI.⁵²⁸ Indeed, many of the concerns that the FBI had were allayed in this process. Stephens, on three separate occasions, sent to the FBI revisions in the manuscript that were made at their request.

Shapiro's explanation regarding the White House's security concerns simply does not survive scrutiny. We know that the book was delivered in February, less than 30 days after the FBI's receipt of the manuscript, and the initial meetings between the Bureau and Stephens on the editing process. Why did Shapiro see the urgent need to provide the pre-publication manuscript to the White House, without the permission of the author or publisher, months before its release?

2. *Hearing testimony*

To obtain a better understanding of Shapiro's motive for taking the Aldrich book to the White House, Congressman Shays asked

⁵²⁶ *Security of FBI Files* hearings, August 1, 1996, p. 33.

⁵²⁷ *Id.*, pp. 58–59.

⁵²⁸ Letter to Howard Shapiro, general counsel of the FBI, from Lisa Kate Osofsky, deputy general counsel of the FBI, July 31, 1996.

Shapiro to define “interested party.” In response, Shapiro gave another, detailed reason for sending the book to the White House:

[T]he first draft of his book contained numerous lengthy passages about internal White House procedures, White House security matters and the text of interviews of White House people. Those—I told them that I could not ensure and ultimately was unable to ensure that Mr. Aldrich would comply with our requirements as to what material could be published and what material could not, that it could be published any day without prior notice to us, as it was, and that I thought given how much it divulged about White House processes, they needed to see it.⁵²⁹

What Shapiro fails to acknowledge is that he delivered the book in February, well before any fears could have developed that Aldrich would publish without complete FBI approval.

Shays then attempted to pinpoint the reason for taking the book to the White House, rather than other agencies.

Mr. SHAYS. Wasn’t it replete with other information that would affect other people? Why did you decide it should only go to the White House?”

Mr. SHAPIRO. Who else do you have in mind, sir?

Mr. SHAYS. Any other interested party?

Mr. SHAPIRO. I’m not sure—Mr. Aldrich wrote a book about his time at the White House, sir, and it was about the White House and the White House and the White House procedures.

Mr. SHAYS. What about all the people that were mentioned, weren’t they interested parties?

* * * * *

Mr. SHAYS. How about the Secret Service, did you notify the Secret Service? I would like an answer.⁵³⁰

Shapiro did not answer the question regarding other agencies mentioned in the Aldrich book, but not made aware of the contents of the book before it was published. Moreover, the Secret Service is responsible for the security of the White House. Yet the Secret Service received no notifications or information regarding the Aldrich book from either the FBI or the White House Counsel’s Office.

B. DISTRIBUTION OF BOOK WITHIN THE WHITE HOUSE

The first people in the White House to see the copy of the Aldrich book were Jack Quinn and Kathleen Wallman. Apparently, the book was divided up among several staff members for their review.

1. Cheryl Mills’ review

Cheryl Mills, Associate Counsel to the President, was given a copy of the Aldrich book to review. She was asked about her knowledge of the book in a deposition before this committee.

⁵²⁹ *Security of FBI Files* hearings, p. 125.

⁵³⁰ *Security of FBI Files* hearings, pp. 125–126.

Question. Were you aware that Howard Shapiro had given Mr. Quinn a copy of Gary Aldrich's book?

Answer. Yes.

Question. Did you review a copy of that book?

Answer. Portions of it.

Question. Were you tasked to review that by Mr. Quinn?

* * * * *

Answer. I think "tasking" is a bit strong, but maybe that is always strong, whenever you are referring to me.

With regard to the portions of the book that I reviewed, the question that I was looking at was whether or not there were disclosures of nonpublic or confidential information within it, and also whether or not—what the impact of these types of disclosures would be on the security personnel process with respect to people's willingness to be candid and open and forthright with regard to the FBI background process; and to the extent that it did have any implications for that process, whether or not these implications were sufficient to be debilitating to people's desire to enter government and serve as a public servant.

* * * * *

Question. Do you know if anyone else in the Counsel's office was given portions of the book to read or given the book to read?

Answer. I was only given a portion, so I am sure that others were also probably reviewing with regard to disclosures of nonpublic or confidential information as well as whether or not such disclosures have an impact on the integrity of and the ability of people to provide candid and open and honest information to the FBI in the process of securing or being reviewed for government positions.⁵³¹

Mills could give no additional information about who reviewed the book and why. But Mills is not the only White House lawyer questioned by the committee who was assigned to review the book.

2. Christopher Cerf's review

Cerf was asked about his knowledge of the Aldrich book at a deposition before the committee. He told the committee that he had responsibilities for reviewing the manuscript similar to those of Mills.

Question. Do you recall the circumstances of your learning about [the Aldrich book], whether it was in a meeting, a counsel office meeting, or outside of that?

Answer. It was in the context of my duties in the Counsel's office.

Question. Were you asked to review portions of the book or a portion of the book?

Answer. Yes.

Question. And who asked you to do that?

Answer. It was either Kathi Whalen or—it probably was Kathi Whalen.

⁵³¹ Mills deposition, pp. 70–80.

Question. And did she explain the reason why she was asking you to review the book?

* * * * *

Answer. While I am not inclined to talk about the process that led to the deliberations on this issue, here is what I feel very comfortable telling you, and that is that I and others were asked to review portions of the book and with an eye towards whether or not there was information that would compromise security in the White House. That was my particular mission. We reported back up the line on this and, to the best of my knowledge, the outcome was that the White House did not take a position one way or the other on what the FBI should do with this matter.⁵³²

The committee has yet to determine the purpose of the White House Counsels' review of Aldrich's book, though not for lack of attempts. The committee subpoenaed all notes and memoranda from the White House related to the matter. However, Special Counsel Jane Sherburne reported that those documents were not "maintained."⁵³³ Why is the White House Counsel's Office "not maintaining" notes? Why were no memoranda created on a project that ostensibly affected White House security? Were there memoranda that were destroyed?

Additionally, why did the review of pre-publication manuscripts fall within the purview of White House counsel "duties"? Was this not more suitably a matter for a security related agency? The White House's lack of response to committee requests continue to be of great concern.

The committee learned on September 18 from the FBI that they refused to accept back from White House Counsel Jack Quinn a copy of Gary Aldrich's book *Unlimited Access*, given to Mr. Quinn by FBI General Counsel Shapiro. The FBI refused to accept the book saying, "Because this is a document in the possession of the White House which you have described as 'responsive' to a congressional subpoena, we believe it would be inappropriate for the FBI to become involved in this matter."⁵³⁴ The FBI and the Justice Department are under subpoena for these documents. Why is the White House playing hot potato with Gary Aldrich's book? It is amazing, but not surprising, that the White House continues to withhold documents relevant to this committee's investigation. Actions such as these increase the skepticism toward this administration. Mr. Quinn should explain his actions in trying to avoid responding to the committee's subpoena.

C. SUMMARY OF 4 YEARS OF POLITICIZATION OF THE FBI

1. Past procedures for White House utilized the Department of Justice

In the past, as a result of concerns about the political use of the FBI, White House contacts have been managed primarily through the Department of Justice. The Assistant Attorney General is the

⁵³² Cerf deposition, pp. 89-95.

⁵³³ Letter from Sherburne to committee Chief Investigative Counsel Barbara Olson, September 10, 1996.

⁵³⁴ Letter from John Collingwood to Jack Quinn, dated September 18, 1996.

primary liaison for contacts between the White House and the FBI. The current FBI has abandoned that formality. Why has the FBI general counsel now taken on the role of White House contact? At Director Freeh's request, Shapiro has held a permanent White House pass since 1993. To the committee's knowledge no other FBI general counsel has had such unfettered access to the White House.

2. *First Counsel's Office not staffed with agents*

In the past, FBI Directors have staffed all offices with career agents within the FBI, agents whose loyalty was to law enforcement, and not to the political winds of 1600 Pennsylvania Avenue. When Freeh was appointed, he appointed three associates from outside the FBI, and created the first Office of the General Counsel. As the person to fill the first general counsel position at the FBI, Freeh chose his long time friend and confidante, Howard Shapiro.

In his deposition before the committee, Shapiro defended Director Freeh's decision to staff the FBI with nonagent attorneys. He said:

And we had—although we had some absolutely, and we still do, some absolutely fabulous agent attorneys who had decided to make a career of it, for the most part I thought we could improve the quality and the experience and the expertise of the office by transitioning from agent attorneys to nonagent attorneys.⁵³⁵

Although Shapiro and Director Freeh may have intended to "improve the quality" of the attorneys at the FBI, they have politicized the FBI, through the actions of Shapiro which indicate the astute political skills and the intent to protect the President and Mrs. Clinton. Shapiro, whether at the behest of Director Freeh or not, has been the most prolific contact with the Clinton administration and the White House—it's ally at the FBI. His permanent White House pass and frequent White House visits allowed and encouraged the spreading of information to the White House as an "affected party."

3. *Travel Office, FBI files, and Aldrich book*

Evidence of the White House's political use of the FBI can be found in the Travel Office scandal, the improper retrieval of FBI files and the improper dissemination of a manuscript to the White House. In the Travel Office matter, the White House improperly requested that the FBI conduct an investigation into the fired Travel Office employees. The Clinton administration has made liberal use of the FBI and tarnished its reputation in the process.

VIII. SECRET SERVICE EXPLANATION

A. INTRODUCTION

When it was revealed that the White House had inappropriately sought and obtained hundreds of FBI files of former Reagan and Bush officials, the first line of defense adopted by the White House

⁵³⁵ Shapiro deposition, p. 18.

came from Craig Livingstone's attorney and was adopted by the White House.⁵³⁶

Mr. Livingstone's attorney, Randall Turk, who interviewed a number of other former White House employees about the matter when Billy Dale's FBI file was discovered, claimed the matter had a "completely innocent explanation" and blamed the problem on a "Secret Service list that still contained Dale's name as a current White House passholder."⁵³⁷ White House spokesman, Mark Fabiani, immediately adopted Turk's explanations.⁵³⁸ Livingstone's attorney also briefed the White House Counsel's Office on Livingstone's explanations of problems with the FBI files.

On June 7, Mr. Turk refused to reveal the name of the "Army detailee," but his identity was revealed to be Anthony Marceca, an old political friend of Livingstone's, not a low level clerk, as had initially been portrayed. Mr. Marceca did not begin working at the White House until August 1993, long after Mr. Dale's name was removed as a current White House passholder and his Secret Service pass summarily revoked.

Another attorney for Livingstone, David Cohen, claimed that "neither Marceca nor Livingstone noticed at first that the lists included so many names that should have been purged from them."⁵³⁹ Yet an undated memo, which appears to be from March 1993, demonstrates that Livingstone clearly understood that there were some names on Secret Service lists that needed to be removed and Livingstone knew that it was his job to remove them.⁵⁴⁰

There was no list after May 19, 1993 which would have contained Mr. Dale's name as a "current White House passholder," since Mr. Livingstone himself sent a memo to the Secret Service to place Mr. Dale and his colleagues on "do not admit" status at the White House, as of May 19, 1993.⁵⁴¹

Of the hundreds of FBI files that were gathered by Livingstone and Marceca, most of them were *never* "current White House passholders" at *any* time in 1993. As the Secret Service concluded in the committee's July 17, 1996 hearings on *The Security of the FBI Files*, on any list created in 1993, most of the 476 names of individuals whose files were improperly obtained would have been listed as inactive.⁵⁴² The explanations offered by the White House and Livingstone were implausible from the start but, since the Secret Service is not in a position to publicly respond to such attacks, the assault on the Secret Service served its purpose as a useful tactic to shift blame.

But even Livingstone had a hard time sticking with the "blame the Secret Service" strategy. On June 7, 1996, the very day his attorney was blaming the Secret Service, Livingstone went to Secret Service Agent Arnold Cole to discuss the matter. In his deposition, Agent Cole revealed:

⁵³⁶ *White House Admits Having Background Files*, the Washington Post, June 8, 1996, p. A1.

⁵³⁷ *Id.*, at 1:41 p.m.

⁵³⁸ *White House Admits Having Background Files*, the Washington Post, June 8, 1996.

⁵³⁹ *Panetta Offers Apology Over Files 'Mistake'*, the Washington Post, June 10, 1996.

⁵⁴⁰ Confidential memorandum from Craig Livingstone to William Kennedy, undated. Livingstone refers to the date on which the green/tan access badges will expire as March 15, 1993. From this information, the committee believes the date of this memorandum to be between March 4, 1993 and March 15, 1993.

⁵⁴¹ May 19, 1993 memo from Craig Livingstone to Arnold Cole, CGE 33034.

⁵⁴² *Security of FBI Files* hearing, July 17, 1996, pp. 46-47.

On June 7, 1996 I received a phone message that Craig Livingstone wanted to see me about a case. On the same day, at approximately 3:45 p.m., I met with Mr. Livingstone outside his office in the Old Executive Office Building. We briefly discussed a temporary passholder case under review.

Unsolicited, Mr. Livingstone asked whether or not I had seen the press release made by his attorney concerning the Billy Dale files. I responded in the affirmative, at which point Mr. Livingstone stated, "We just wanted you guys to know that we weren't blaming the Secret Service. Using an old list was our fault, and we had the current stuff you guys gave us. I don't know what happened."

I told Mr. Livingstone that I did not think he could blame us. Basically the conversation was terminated and I reported to my supervisor.⁵⁴³

Cole testified before the committee that he had clearly briefed Livingstone on the use of Secret Service lists.⁵⁴⁴ At any rate, no combination of errors attributed by the White House to the Secret Service can explain how and why the Office of Personnel Security inappropriately obtained hundreds of FBI files of former Reagan and Bush officials.⁵⁴⁵

In testimony before the Senate Judiciary Committee on June 28, 1996, Livingstone appears to deny talking to anyone in the Secret Service about the matter:

Senator ABRAHAM. Once this was reported, I mean, a few weeks ago, when it became clear that obviously there were some files that were in this category we are discussing, did you talk to the FBI, the Secret Service, or anybody about how this could have happened?

LIVINGSTONE. I remember talking to a lot of people because I was mortified once it became apparent what we had, and I informed counsel. As I recall it specifically, I informed my counsel, and my counsel informed White House counsel later that night, separate from me. The FBI came in immediately and removed the files.

Senator ABRAHAM. You had talked to the FBI then and the Secret Service about it?

Mr. LIVINGSTONE. No.

Senator ABRAHAM. You never did at that point?

Mr. LIVINGSTONE. No.⁵⁴⁶

Livingstone did speak with the Secret Service about this matter. Agent Cole, a decorated Secret Service employee, testified that Livingstone left a copy of his attorney's press release for him in his office and that Livingstone was making efforts to contact him throughout the week.⁵⁴⁷ When Agent Cole spoke with Livingstone, Cole testified that Livingstone did not want to speak in his office.

⁵⁴³ Cole deposition, pp. 41–42.

⁵⁴⁴ *Security of the FBI Files* hearing, July 17, 1996, p. 47.

⁵⁴⁵ *Id.*, pp. 24–41.

⁵⁴⁶ *White House Access to FBI Summaries*; hearing before the Senate Committee on Judiciary, 104th Cong., 2d. Sess., June 28, 1996 p. 111.

⁵⁴⁷ Cole deposition, p. 38.

Cole asked him if he thought his office was bugged and Livingstone “indicated to [Cole] that he just didn’t think it was safe to talk in his office.”⁵⁴⁸

While the White House continued to place blame on the Secret Service, no one from the White House ever contacted the Secret Service to make any complaints about any problems with Secret Service lists.⁵⁴⁹ When Secret Service Agents Libonati, Undercoffer and Cole testified before the committee on July 17, 1996, it became clear that the Secret Service was not culpable for the “egregious violations of privacy” that took place in the Office of Personnel Security. The Secret Service spent an extraordinary amount of time and resources carefully reviewing the quality of information they provided to the White House. There were no systemic problems for which the Secret Service is responsible that would account for these actions.⁵⁵⁰

B. THE SECRET SERVICE’S ROLE IN OBTAINING WHITE HOUSE ACCESS

The Secret Service maintains the E-Pass system. It is a computerized access and pass holder system that produces hard passes for the White House and computer printouts of pass holders. The lists produced by the E-Pass system are used to show who has and who does not have access to the White House. John Libonati, Supervisory Special Agent with the Secret Service, testified before the committee that “[t]he printouts are not designed, and should not be used for other purposes. The printouts are produced for uses related to access issues.”⁵⁵¹

As Agent Libonati testified, “the request for FBI files by any White House administration is made solely for active employees.”⁵⁵² The Secret Service provides lists of active employees, inactive employees or a master list which contains the names of approximately 24,000 active and inactive White House passholders for the previous 8 years.⁵⁵³ Letter from William H. Pickle, Executive Assistant to the Director of the Secret Service, to Chairman Clinger, August 23, 1996.⁵⁵⁴

The master List, kept by the Secret Service, includes 8 categories of a File Number; First, Middle, and Last Names; Pass Type; Month, Date and Year, Date of Birth; Status; Month, Date, and Year; and Office Name. The pass type indicates the areas to which the passholder has access. The first listing of month, date, and year is listed only for those whose pass is scheduled to expire, and the date listed is the date of expiration. The office name is the office in which the passholder works. The status is the place where a no-

⁵⁴⁸ *Id.*, p. 184.

⁵⁴⁹ *Security of the FBI Files* hearing, July 17, 1996, p. 44.

⁵⁵⁰ *Id.*, pp. 24–41.

⁵⁵¹ *Id.* Opening statement of Agent Libonati.

⁵⁵² *Id.*, p. 25.

⁵⁵³ *Id.*, pp. 27–28; On August 23, 1996, William H. Pickle, Executive Assistant to the Director of the Secret Service, wrote to Chairman Clinger to explain why the Secret Service retains 8 years worth of inactive passholder records. He wrote, “In April of 1982, a study was conducted by the Secret Service Office of Management and Organization. The study concluded that due to a recurring need for information in these files, an 8-year retention period would be recommended to the National Archives for review. The request was reviewed and approved by Archives appraisers in January of 1983.”

⁵⁵⁴ Thus, Secret Service Records would include the names and status of those who held White House passes for 8 years.

tation is made of whether the passholder's access is "active" or "inactive." That status is indicated by an "A" or an "I."

C. THE LISTS USED BY THE WHITE HOUSE OFFICE OF PERSONNEL SECURITY

One of the excuses offered by the White House as to why the Office of Personnel Security improperly obtained FBI background files was that they were updating their files because the previous administration had removed all personnel files from the White House. According to the Clinton administration, the list provided to them from the Secret Service, which they used to find out who should have access to the White House, incorrectly included names of people from previous administrations who should not have had access to the White House. White House officials insistently refer to the Secret Service's list as defective.

Craig Livingstone testified before the committee, "[T]his mistake occurred simply because the passholder list provided to my office by the Secret Service contained some names of former staffers who no longer had access to the White House complex, interspersed among the names of actual, current passholders and others who continued to have access."⁵⁵⁵ Liza Wetzl, now Confidential Assistant to the Secretary of the Army, testified before the committee that, "I . . . concluded that Tony must have ordered previous reports for every person on whatever out-of-date Secret Service list he had been working from."⁵⁵⁶ This was an attempt to shift the blame for improperly ordering hundreds of FBI background files from the White House to the Secret Service. However, we learned that any list that was produced in 1993, would have identified the vast majority of the people whose files were wrongfully obtained as "Inactive."

At the time Livingstone and Marceca testified, the committee did not have the benefit of documents withheld by the White House. When the White House finally produced subpoenaed documents, they revealed that the White House knew that it was required to keep the Secret Service apprised of changes of those with access.⁵⁵⁷ These memoranda demonstrate that the White House clearly knew that to remove names from access lists was their job.

D. THE ONLY LIST THEY COULD BE TALKING ABOUT

Because it had been accused by the White House of providing inaccurate lists for use by the White House Security Office, the Secret Service undertook an exhaustive audit of their E-Pass system and any lists that may have been provided to the White House. At hearings before this committee, the Secret Service spoke in detail about the lists available to the White House.⁵⁵⁸

Agent Libonati described the information which led to the search for mistakes in Secret Service lists. Agent Libonati told the committee, "Upon receipt of two lists which total 476 individuals

⁵⁵⁵ *Security of FBI Files* hearings, June 26, 1996, p. 30.

⁵⁵⁶ *Id.*, p. 47.

⁵⁵⁷ Memorandum from Craig Livingstone, Director of White House Security to Arnold Cole; "Please place the following people on restricted access. They are restricted from gaining access to the White House Complex without written authorization of Mr. David Watkins." Document CGE 33034; May 19, 1993.

⁵⁵⁸ *Security of the FBI File* hearing, July 17, 1996, pp. 24-41.

[whose FBI background files the White House obtained improperly] the Secret Service set out to determine if, in fact, we had provided ANY LIST which would have inaccurately reflected any or all of these 476 names as ACTIVE passholders in 1993 or 1994.”⁵⁵⁹ And because, according to Libonati, [t]he Secret Service has for many years provided printouts containing passholder information to the White House Office of Personnel Security,” Libonati characterized the issue before the Secret Service in the following manner: “Did the Secret Service produce and/or provide any list or lists which would have inaccurately reflected these 476 individuals as ACTIVE passholders?” Libonati presented to the committee evidence uncovered by the Secret Service search and audit of their files, which clearly demonstrated that the Secret Service could not have provided such a list.⁵⁶⁰

The Secret Service conducted an exhaustive audit of its records. Libonati told the committee, “The audit confirms that from 1984 to July of 1993, 379 of the 476 names on the subject list were made Inactive. We can account for 8 errors . . .”⁵⁶¹ Names were made inactive only at the request of the White House. However, many of the names mentioned above were entered into the E-Pass system when it was installed, and they were entered as Inactive. Thus, at no time were many of the names on the list of 476 in the E-Pass system as active passholders.

Libonati recounted before the committee the evidence uncovered by the Secret Service in their search for lists produced by the E-Pass system at certain times. According to Libonati, the evidence showed:

- Ninety-four of the names of the 476 on the list were inactivated between 1984 and 1989, before we installed our current E-Pass system.⁵⁶²
- In a printout of inactive passholders, the evidence shows that “182 of the 476 names in question appear as they should on this inactive printout.”⁵⁶³
- In a printout of active passholders from May 2, 1994, “368 of the 476 names in question do not appear on this list, and they should not appear on this list. This is an active passholder list.”⁵⁶⁴
- In a printout of active passholders as of July 31, 1993, “379 of the 476 names in question do not appear on this list.”⁵⁶⁵
- In a printout of inactive passholders as of August 19, 1994, 429 of the 476 names in question do and should appear on this inactive list.”⁵⁶⁶
- In a March 31, 1993 active passholder list provided to the committee by the White House, 408 of the 476 names are not on the list. In addition, the name of Elizabeth Belfore was not on the March 31, 1993 list, but is among the 476 people whose

⁵⁵⁹ *Id.*, p. 25. (Emphasis in original.)

⁵⁶⁰ *Id.*, pp. 24–41.

⁵⁶¹ *Id.*, p. 25.

⁵⁶² *Id.*, pp. 33–34.

⁵⁶³ *Id.*, p. 34.

⁵⁶⁴ *Id.*, p. 34.

⁵⁶⁵ *Id.*, p. 35.

⁵⁶⁶ *Id.*

background files were requested by the White House. Belfore did not receive a pass until after July 8, 1993.⁵⁶⁷

The data compiled by the Secret Service clearly demonstrated that the only way Marceca could have obtained all of the names he sought files on would have been by utilizing a master list with both "Active" and "Inactive" employees, with the notations "A" and "I" clearly indicated on the printout. In using the master list, Marceca would have had to deliberately order the files of hundreds of individuals identified as "Inactive." Agent Cole testified that he briefed Marceca's supervisor, Livingstone, on the "Active" and "Inactive" list notations:

Question. You would have meetings where you instructed—I believe you testified you instructed Craig Livingstone on procedures and how to get material from your office and get updated lists, that type of thing?

Answer. Yes, we have had conversations about that.

Question. In terms of reading the lists, what "A" and "I" meant, active and inactive; that kind of thing had been explained to Mr. Livingstone?

Answer. Yes.⁵⁶⁸

Marceca has testified that he believed the designations, "A" and "I" on the Secret Service lists meant "Access" and "Intern."⁵⁶⁹ To believe this story, one would have to accept that Marceca, whose involvement in political campaigns is extensive, believed that such well known former White House officials as James Baker, A.B. Culvahouse, Ken Duberstein and many others were "holdover interns," a category of passholders which does not exist.

Another fact uncovered by the Secret Service discredits Marceca's explanation that he was working with an old, or outdated list. One of the names on the list of files he obtained, Elizabeth Belfore, did not begin working at the White House until July 1993. Thus, any list Marceca worked from which included her name was created after this date. Since Marceca did not begin working at the White House until August 1993, it is apparent that he must have used a list created during that time period. A list made at that time would not have included most of the names of individuals whose files were eventually requisitioned by the White House.

E. DEACTIVATION

At hearings before the committee, committee members questioned why some former administration employees remained as active passholders in the Secret Service E-Pass System. Libonati and Cole explained that it is the responsibility of the White House to inform the Secret Service when an employee's status should change from active to inactive.

Libonati made the process of deactivation of passes clear in his opening statement:

A pass is also made inactive solely at the request of the White House. It is the responsibility of each adminis-

⁵⁶⁷ *Id.*, pp. 35–36.

⁵⁶⁸ Cole deposition, pp. 47–48.

⁵⁶⁹ *Security of the FBI Files* hearing, July 26, 1996.

tration to identify those pass holders whom they wish to remove from the active passholder list. Regardless of how obvious it may seem to anyone in the Secret Service, we cannot, should not, and do not inactivate a pass without clear instruction from the administration.⁵⁷⁰

After Libonati's explanation, Congresswoman Collins, the ranking minority member of the committee, was still confused about the process used to deactivate a pass.

Mrs. COLLINS OF ILLINOIS. Could you explain to me why Senator Tower, who had died 2 years earlier in a plane crash, still had an active White House pass in '93?

Mr. COLE. Because [the May 27, 1993 memorandum] was the first notice we got from the White House to deactivate his pass.

Mrs. COLLINS. Did you know he had died?

Mr. COLE. I wasn't aware of the fact that he had a White House Pass, Ma'am.

Mrs. COLLINS. Did you know he had died?

Mr. COLE. Yes.

Mrs. COLLINS. Does anybody ever cull the lists to take out people who are deceased?

Mr. COLE. The requirement for deactivation of passes that is the same requirement that took place for Vincent Foster, that we would have to have someone from the White House to tell us to deactivate it. It is obvious that person would not pose a threat to the complex, because they are deceased.

Mrs. COLLINS. Why would you have to have somebody tell you to deactivate a file of somebody that the Service knows is not going to use it?

Mr. COLE. Because that documentation belongs to the White House.

Although White House staff feigned ignorance of it, the process of deactivation of passes for deceased or retiring personnel was well known to the White House Security Office. The fact that Livingstone made the request that the Secret Service deactivate Senator Tower's pass establishes his knowledge of the process of updating the Secret Service access list as a White House responsibility.⁵⁷¹ Other evidence points to the fact that Livingstone was well acquainted with the process of removing Bush administration officials from Secret Service access lists.

In a confidential memorandum from Craig Livingstone to William Kennedy, Livingstone notes, "Please note that there are many Bush administration employees that still have active badges. USSS informs me that it is WHS responsibility to deactivate badges. I am working with WHOMA to begin this process." Because of informa-

⁵⁷⁰ *Id.*, p. 27. (Emphasis added.)

⁵⁷¹ Memorandum from Craig Livingstone, Director of White House Security; Re: deactivation of Senator Tower; May 27, 1993. "Please deactivate the pass issued to Senator Tower." CGE 047989.

tion contained in the memorandum, it's date appears to be between March 4, 1993 and March 15, 1993.⁵⁷²

Documents dated August 9, 1993 include notes made by Marceca from a meeting with Nancy Gemmell that included Lisa Wetzel and Craig Livingstone. In those notes, Marceca writes, "De-Activate former staff FBI contact to remove STOP on [illegible]." ⁵⁷³ The White House staff was clearly familiar with the process of updating Secret Service lists and the language associated with it.

In addition to the notes and memoranda of Livingstone and Marceca, testimony before the committee also points to the fact that the staff of the White House Security Office was aware of the process for deactivating White House passholders. In his deposition to the committee, Agent Cole stated that he briefed Livingstone on such matters.

Livingstone and Marceca knew the process of deactivating White House access passes was a primary function of their jobs, and they were fully briefed on the process required to do that. Nonetheless, they tried to blame the Secret Service for their malfeasance. Because of their attempts to shift the blame, the Secret Service was forced to spend countless hours and resources responding to inquiries and allegations. The only logical conclusion to the audits conducted, was that no active Secret Service list could have produced the list of names of those whose FBI files were wrongfully requested by the White House.

IX. WHITE HOUSE PASSES AND SECURITY ISSUES

A. LAX WHITE HOUSE SECURITY PROCEDURES WERE A PRECURSOR TO FBI FILES ISSUE

1. Problems with White House passes

The gathering of hundreds of FBI files was a consequence of the White House placing highly unsuitable personnel and supervisors in charge of the Security processes at the White House. The fact that the Clinton White House followed lax security procedures and was negligent in obtaining White House passes became apparent over 2 years ago, in March 1994, after lengthy congressional inquiries.

A GAO inquiry into the delays in obtaining White House passes was requested by Chairman Clinger, and Representatives Frank Wolf and Porter Goss in March 1994, and released in October 1995. The GAO report outlined the unprecedented delays of the Clinton White House in obtaining passes.⁵⁷⁴ In keeping with the Clinton administration's pattern of resistance to investigations, the GAO

⁵⁷² Confidential memorandum from Craig Livingstone, Chief of White House Security, to William Kennedy, Associate White House Counsel, undated. Within the memorandum, Livingstone refers to a crash of the WAVE computer system occurring on March 4, 1993. Livingstone refers to the date on which "green/tan access badge[s]" will expire as March 15, 1993. From this information, the committee believes the date of this memorandum to be between March 4, 1993 and March 15, 1993.

⁵⁷³ Anthony Marceca, notes from meeting with Nancy Gemmell, August 9, 1993.

⁵⁷⁴ GAO report to Congress, "Personnel Security: Pass and Security Clearance Data for the Executive Office of the President," October 19, 1995.

inquiry examining the delays in obtaining the passes was met with numerous obstacles for over a year.⁵⁷⁵

When the GAO inquiry finally concluded, it reported the following findings:

- A mere two permanent passes received final approval prior to September 20, 1993—9 months into the new administration.⁵⁷⁶ (In the past, permanent White House passes were obtained for all staff by approximately 6 to 9 months into a new administration.⁵⁷⁷)
- In 1993, new Clinton White House staffers held temporary passes for an average of 341 days, thus requiring numerous renewals. (A temporary pass is usually issued for 90 days.)⁵⁷⁸
- In 1993, the Secret Service stated that it routinely granted eight or more extensions to individuals for temporary passes as requested by the Executive Office of the President.⁵⁷⁹
- There were 190 new Clinton White House staffers who took more than 100 days to complete the SF-86—the basic paperwork needed for the FBI to initiate a background investigation.⁵⁸⁰
- There were 36 new Clinton White House staffers who took over 300 days—almost a year—to complete their SF-86s.⁵⁸¹
- Of the 400 staff entering on duty during 1993, 250 took over 300 days to be approved for permanent passes.⁵⁸²
- In 1993, 361 of 398 individuals took 200 days or more to be approved for a permanent pass.⁵⁸³
- Only about two dozen staffers had “interim clearances” according to the White House in the first 8 months of the administration.⁵⁸⁴
- Individuals entering on duty during 1993 received final approval for permanent White House passes “an average of 346 days from their start date.”⁵⁸⁵
- “The longer time needed to process 1993 entrants was primarily attributable to the time individuals took to complete the SF-86 and to subsequent actions taken by the Executive Office of the President.”⁵⁸⁶

When White House advisor George Stephanopoulos was questioned about the problems with obtaining passes during “This Week with David Brinkley,” on June 30, 1996, he erroneously claimed:

STEPHANOPOULOS. Well most people did go get their interviews. Most people got their passes. If there was slip-page, that was a mistake. It was wrong.

⁵⁷⁵ The GAO inquiry which was requested in March 1994 was still stalled in October 1994 when Chairman Clinger, Representative Wolf and Representative Goss wrote to White House Chief of Staff Leon Panetta on October 7, 1994 concerned about the delay in the investigation.

⁵⁷⁶ GAO report, p. 21.

⁵⁷⁷ Staff interview with Jane Dannenhauer.

⁵⁷⁸ GAO report, p. 28.

⁵⁷⁹ GAO report, p. 29.

⁵⁸⁰ GAO report, p. 22.

⁵⁸¹ GAO report, p. 22.

⁵⁸² GAO report, p. 21.

⁵⁸³ GAO report, p. 29.

⁵⁸⁴ GAO report, p. 34.

⁵⁸⁵ GAO report, p. 3.

⁵⁸⁶ *Id.*

SAM DONALDSON. Aldrich [FBI agent Gary Aldrich] says hundreds.

STEPHANOPOULOS. Well, I'm not sure that's true . . . I don't have the exact number.

According to a White House memo from Craig Livingstone, Stephanopoulos' temporary pass was renewed for an additional 90 days on December 13, 1993.⁵⁸⁷ Stephanopoulos, like most of the White House staff at that time, had numerous renewals of his temporary pass.

The GAO inquiry was preceded by months of congressional inquiries into the inordinate delay in obtaining White House passes.⁵⁸⁸ Senior officials, including the then-Chief of Staff Mack McLarty, did not obtain permanent passes until March 1994. Once this serious security breach of the Clinton administration was brought to light in March 1994, the White House was forced to respond.

The press began reporting on the delays in the issuance of permanent White House passes in early 1994. On March 10, 1994, the Wall Street Journal first pointed out that the White House had not approved passes for senior White House officials such as the Director of the Office of Administration, Patsy Thomasson.⁵⁸⁹ This article appears to have generated a memo from Associate Counsel William Kennedy to Mack McLarty explaining the procedures to receive a permanent pass.⁵⁹⁰ The next day the Washington Post reported that, "15 White House aides, including press secretary Dee Dee Myers and another unidentified senior official, have yet to receive security clearances because they failed to complete necessary paperwork . . ."⁵⁹¹

By March 12, 1994, the White House conceded that the situation was actually much worse than it originally admitted and that hundreds of staff did not have permanent passes: "White House Press Secretary Dee Dee Myers . . . confirmed that about a third of the 1044 employees designated as White House staff, including herself, have not received their permanent passes."⁵⁹² Of the 125 senior staff, approximately one-third still did not have their permanent passes.⁵⁹³ By March 14, 1994, the White House raised the number of officials who did not have security clearances to 100 rather than the 15 individuals originally reported.⁵⁹⁴ Clearly, the responses provided to Congress by McLarty were misleading, incomplete and inaccurate.⁵⁹⁵

⁵⁸⁷ White House production CGE 047029. Memorandum for U.S. Secret Service Pass Section from White House Security, Re: extension of passes, December 13, 1993.

⁵⁸⁸ Representative Frank Wolf began inquiring about the delays in White House passes and the lack of procedures being followed with passes in July 1993. Throughout the fall of 1993 and into 1994, then-Chief of Staff Mack McLarty assured Wolf that clearances were being handled "in a timely manner."

⁵⁸⁹ "Who is Patsy Thomasson?" Wall Street Journal, March 10, 1994.

⁵⁹⁰ Memorandum to Thomas F. McLarty from William H. Kennedy III, re: procedures to receive a permanent pass, March 10, 1994, CGE 054752.

⁵⁹¹ "After Year, 15 White House Aides Have Yet to Receive Security Clearances," the Washington Post, March 11, 1994.

⁵⁹² "White House lags badly on background checks," the Washington Times, March 12, 1994.

⁵⁹³ *Id.*

⁵⁹⁴ "100 on White House Staff Lack Clearance," the Washington Post, March 14, 1994.

⁵⁹⁵ See letters to Rep. Frank Wolf from Mack McLarty dated August 19, 1993, October 27, 1993 and February 24, 1994.

Ms. Jane Dannenhauer, Assistant to the Counsel to the President in charge of the Security Office during the Nixon, Ford, Reagan and Bush administrations, reported that a new administration normally completed its pass issuance within approximately 6 months, or at most 9 months.⁵⁹⁶ In comparison, the GAO reported that only *two* Clinton staffers had permanent passes 9 months into the administration.⁵⁹⁷ Messrs. Kennedy and Livingstone, who were responsible for White House pass issuance, did not obtain their own passes until November 23, 1993.⁵⁹⁸

2. Unsuitable personnel in charge of overseeing the Office of Personnel Security

While the committee and the public have yet to learn who hired Craig Livingstone, the committee discovered information on the hiring of his supervisor, William Kennedy. Mr. Kennedy testified that Mrs. Clinton participated in his selection as Associate White House Counsel.⁵⁹⁹ At the time of his background investigation, Kennedy informed the FBI's SPIN Unit Chief Bourke that he was a "close personal friend of the President and Mrs. Clinton for twenty years and was a managing partner in the same Arkansas law firm in which Mrs. Clinton was employed."⁶⁰⁰

Mr. Kennedy, in his position as an Associate Counsel, reviewed the sensitive background investigations of Presidential appointees and White House staff, including Director of Personnel Security Craig Livingstone. Although Kennedy supervised Livingstone's office and was aware of problems in Livingstone's background, he favorably adjudicated his file.⁶⁰¹

Mr. Kennedy had background problems of his own. Mr. Kennedy did not properly disclose his failure to pay Social Security taxes for a servant in his home. He paid the taxes belatedly under his wife's former married name.⁶⁰² Just as Kennedy had ignored the problems in Livingstone's background, Livingstone adjudicated Kennedy's background favorably, ignoring the derogatory information.⁶⁰³ Although each had completed the adjudication of the other's file, Kennedy did not forward either his or Livingstone's file to the Secret Service for months.⁶⁰⁴

Four Counsels to the President and two Chiefs of Staff kept Mr. Livingstone in his position despite serious concerns about his background. Livingstone was retained despite his penchant for short working hours and routine demands for large salary increases. Keeping Craig Livingstone employed seemed more important to

⁵⁹⁶ Staff interview of Jane Dannenhauer.

⁵⁹⁷ GAO report, p. 21.

⁵⁹⁸ GAO documents prepared for GAO report, January 5, 1995. (In committee files).

⁵⁹⁹ Kennedy deposition, June 18, 1996, p. 4:

Question: Did the First Lady have any involvement in your hiring?

KENNEDY. She did.

⁶⁰⁰ February 26, 1993 memo to Mr. Brekke from Mr. Bourke regarding "Meeting with William Kennedy, Associate Counsel, the White House, February 18, 1993. (FBI document production, July 10, 1996, unnumbered.)

⁶⁰¹ Kennedy deposition, June 18, 1996, p. 9.

⁶⁰² "Patsy Takes the Fiske," Wall Street Journal, March 24, 1994.

⁶⁰³ CGE 054658, undated document titled "Deconcini" with questions and answers, CGE 54654-662.

⁶⁰⁴ Ann Devroy, *100 on White House Staff Lack Clearance*, the Washington Post, March 14, 1994.

Clinton administration officials than maintaining the security of some of the Nation's most sensitive files.⁶⁰⁵

Former White House Counsels have testified that the process of reviewing FBI files "is a solemn, legal and ethical obligation."⁶⁰⁶ After the committee discovered that the Office of Personnel Security ordered the files of hundreds of former Reagan and Bush administration officials, the Director of the FBI, Louis Freeh, called the actions "egregious violations of privacy."⁶⁰⁷ Director Freeh continued to state that the files were ordered "without justification."⁶⁰⁸ As Director Freeh pointed out, the system utilized relied on the "good faith and honor" of those involved in the process.⁶⁰⁹ As the Washington Post opined on June 17, 1996:

. . . damage was done from Day 1 when Craig Livingstone was put in this job. The last people in government to have access to, let alone be custodians of, sensitive background investigation reports and material should be political operatives. That, unfortunately, is what the Clinton administration seems to have done. And that's for starters.⁶¹⁰

FBI Special Agent Tom Renaghan, who supervised the FBI agents who conducted background investigations at the White House, remembered issues in Livingstone's background:

that were not totally favorable . . . they [FBI agents Aldrich and Sculimbrene who conducted background investigations at the White House] both felt that he wasn't the right guy to be the Security Director. They didn't think he had the background or demeanor, didn't appear to be the kind of guy that would be the type of person that would be—you would expect in that position . . . He was unprofessional in many ways, as unprofessional as they would perceive a guy to be who had that type of a job. . . . They voiced their opinion to me about that periodically asking me to take some kind of action to get something done with respect to him.⁶¹¹

Mr. Kennedy allowed Livingstone to retain his sensitive position after reviewing Livingstone's background file. Although both FBI and Secret Service agents raised suitability and security concerns about Livingstone, Kennedy ignored them.⁶¹² Senator Dennis DeConcini, the then-Democratic chairman of the Treasury Postal Service and General Government Subcommittee of the Appropriations Committee, which approved appropriations for the White

⁶⁰⁵ Three attorneys in the White House Counsel's Office wrote letters requesting a raise for Craig Livingstone, even though there was a salary freeze, CGE 048622, 048627; Mr. Livingstone wrote several letters to Abner Mikva requesting a raise, stating, "[T]his is my last try to remain part of the team." CGE 048058; See, supra section III.

⁶⁰⁶ *Security of FBI Files* hearing, June 19, 1996, p. 32. (Testimony of A.B. Culvahouse.)

⁶⁰⁷ Howard M. Shapiro, general counsel, FBI; *Report of the General Counsel on the Dissemination of FBI File Information to the White House*; June 14, 1996. (Statement of FBI Director Louis Freeh).

⁶⁰⁸ *Id.*

⁶⁰⁹ Howard M. Shapiro, general counsel, FBI; *Report of the General Counsel on the Dissemination of FBI File Information to the White House*; June 14, 1996.

⁶¹⁰ "The FBI Files Flap: Take 2," the Washington Post, June 17, 1996.

⁶¹¹ Renaghan deposition, July 19, 1996, pp. 62–65.

⁶¹² Cole deposition, July 10, 1996, pp. 21–22.

House, as well as chairman of the Senate Intelligence Committee, recommended that Livingstone be replaced in 1994 with a professional careerist. Senator DeConcini's recommendations were ignored by then-White House Counsel, Lloyd Cutler.⁶¹³

B. THE PROCESS BY WHICH BACKGROUND INVESTIGATIONS ARE CONDUCTED

The process for obtaining a permanent access pass to the White House generally requires the following steps:

1. *Pre-employment steps*

a. Security interview

Prior to each person's appointment, applicants must undergo a security interview conducted by the relevant security office.⁶¹⁴ In the case of the political staff, generally the "White House staff," the interview would be conducted by the Office of Personnel Security, supervised by Livingstone. For the career staff, the Office of Administration Security Officer would conduct the interviews.⁶¹⁵ During the first year-and-a-half of the Clinton administration, hundreds of employees did not submit to this interview prior to employment, or for many months after being hired.⁶¹⁶

b. Submit to a drug test

All applicants must submit to a drug test. If the test is positive, the person is supposed to be disqualified from appointment.⁶¹⁷ Many of the new employees in the Clinton administration did not take drug tests prior to employment at the White House, and they were often conducted months later.

c. An initial name check

Applicants must undergo an initial name check in which their name, date of birth, place of birth, and Social Security number are checked through the Secret Service's Workers, Appointment, and Visitors Entrance System (WAVES). This consists of checks through four computer databases: the FBI's National Crime Information Center database; a criminal history database; a Secret Service database; and a Washington-area law enforcement database.⁶¹⁸ This is the type of name check that is conducted for visitors at the White House. For many Clinton White House staff in the first year-and-a-half, this was the only background check conducted on them.

d. An extensive FBI name check

In this process, the White House forwards a request form to the FBI to check the name through the FBI Central Records, computer databases and the Criminal Justice Information Services database

⁶¹³ August 11, 1994 letter to the President from Senator DeConcini.

⁶¹⁴ GAO report, p. 15.

⁶¹⁵ Easley deposition, July 26, 1996.

⁶¹⁶ GAO report.

⁶¹⁷ GAO report, p. 15.

⁶¹⁸ GAO report, p. 15.

to identify any derogatory information and prior arrest records.⁶¹⁹ Any previous report is also provided if the individual already has an FBI background investigation on file.

e. Obtaining a temporary pass

Each new employee who is expected to work 90 days or more has 30 days from the date of employment in which to complete the SF-86, an FBI investigation consent form, and a tax check waiver.⁶²⁰ This 30 day standard was the regular practice in past administrations; however, there was no such legal requirement.

Mr. Charles Easley, who headed up the Security Office for career employees at the White House, stated that if someone did not turn in their SF-86s and other background information within 30 days, “they had a lot of time to sit at home and do their forms” because he would not allow someone to work at the White House.⁶²¹ Mr. Easley said that this was not the case for the staff handled by Livingstone. Easley acknowledged that he was aware that Livingstone allowed staff to work at the White House and obtain a temporary pass without turning in paperwork, a change in normal procedure.⁶²²

Previously, the practice had been that an individual had to stay on an “access list” prior to completing the SF-86 and related paperwork, which meant the person would have to present positive identification each time he or she entered the White House complex.⁶²³ Once the FBI name check is returned, the individual would be issued a temporary pass for a period not to exceed 90 days. After one extension, the Secret Service is supposed to contact the requesting office to provide a rationale for an additional extension.⁶²⁴ Each new employee also is required to attend a security briefing at which his or her attendance should be documented.⁶²⁵

f. Obtaining a permanent pass

Before a permanent pass is obtained, the FBI or some other agency must conduct a full-field background investigation. If the investigation reveals information that warrants attention, the FBI notifies the White House Counsel’s Office, the White House Office of Personnel Security, or the Security Office of the EOP (administered by Charles Easley) and might provide an interim report.⁶²⁶

Once the reviewing office receives the FBI background investigation summary, it determines suitability and decides whether to forward the file to the Secret Service. A written request is sent to the Secret Service for a permanent access pass for the employee and, if the Secret Service agrees there is no danger to the President or other protectees, a permanent pass is issued.⁶²⁷

During the first year-and-a-half of the Clinton administration, this process was neglected and hundreds of new White House staff worked in positions, including the most senior positions, with only

⁶¹⁹ GAO report, p. 15.

⁶²⁰ GAO report, p. 16.

⁶²¹ Easley deposition, p. 48.

⁶²² Easley deposition, pp. 48–50.

⁶²³ GAO report, p. 16.

⁶²⁴ GAO report, p. 16.

⁶²⁵ GAO report, p. 16.

⁶²⁶ GAO report, p. 17.

⁶²⁷ GAO report, p. 18.

very limited checks on their backgrounds and no permanent passes. The importance of following procedures and determining the suitability of staff members is to protect both the President, personally, and the vast amount of sensitive information at the White House.

At no place is it more important that individuals of the highest caliber serve in positions of responsibility than at the White House. The White House handles matters of life and death on a daily basis and the American people must be able to rely upon stable and suitable people being involved in this process. Because the White House had failed in this process, Presidential Assistant Patsy Thomasson made this alarming admission in her March 22, 1994 testimony before the House Treasury Postal Appropriations subcommittee: "We don't think we have any Aldrich Ames at the White House . . . But we certainly could."⁶²⁸

This admission prompted then-Congressman Dan Glickman, chairman of the House Intelligence Committee to write to the Director of the CIA asking what steps he had taken to ensure that White House staffers without clearances did not have access to classified material.⁶²⁹ Representative Glickman noted at the time, "The urgency of this matter has been highlighted by the arrest of Aldrich Ames."⁶³⁰ Early in the administration, there was cause for concern about White House personnel.

C. BACKGROUND INVESTIGATIONS OF CLINTON WHITE HOUSE STAFF

1. *White House staff provided minimal cooperation to the FBI*

The FBI agents who worked on a day-to-day basis in conducting FBI background investigations on the new Clinton White House staffers were very familiar with the delays in obtaining White House passes. From the start, the process was slower than with previous administrations and staff cooperation was limited.

FBI Agent Dennis Sculimbrene testified that the incoming administration usually starts sending cases on Cabinet-level personnel and appointees in December, before the Presidential Inauguration. But that did not occur with the Clinton administration.⁶³¹ Agent Sculimbrene said there was a marked contrast with this administration: "the forms were poorly filled out and they didn't even start getting them until July."⁶³² When they received the forms, they were often backdated.⁶³³

Agent Sculimbrene's supervisor, Tom Renaghan, also reported that backgrounds were received late and were backdated.⁶³⁴ FBI Agent Cecelia Woods, another agent assigned to the White House, reported that she saw the dates on SF-86s visibly changed and received SF-86s sometimes 8 months after they had been completed by the appointee.⁶³⁵

FBI Agent Greg Schwarz testified that he had trouble setting up interviews or getting people to appear for interviews and was

⁶²⁸ Patsy Takes the Fiske, the Wall Street Journal, March 24, 1994.

⁶²⁹ *Id.*

⁶³⁰ *Id.*

⁶³¹ Sculimbrene deposition, July 15, 1996, p. 28.

⁶³² *Id.*, p. 29.

⁶³³ *Id.*

⁶³⁴ Renaghan deposition, pp. 13-15.

⁶³⁵ Woods deposition, July 10, 1996, pp. 20-22.

aware of this happening to other agents at the White House.⁶³⁶ Agent Woods testified that Renaghan, her supervisor, advised Unit Chief Bourke of these irregularities and that Bourke should have discussed the problems with Associate White House Counsel Bill Kennedy.⁶³⁷ Woods, however, never saw any corrective actions taken on issues she or her colleagues raised with her supervisors.⁶³⁸

FBI Agent Gary Aldrich explained that he had problems conducting background interviews, including: problems in locating individuals, an inability to contact them directly and appointments being made and broken.⁶³⁹ As a result of these problems, Deputy White House Counsel Vincent Foster sent out a memo to all staff on February 17, 1993 instructing them to cooperate with FBI Agents Aldrich and Sculimbrene. Mr. Foster wrote:

There are a large number of staff members yet to be interviewed and only a few weeks left to complete them before your temporary clearance expires. Please be responsive to the Agent's request for an interview and accommodate his schedule.⁶⁴⁰

There was such laxity in submitting the names of new White House staff for background investigations that Bourke resorted to clipping newspaper articles which identified new staffers and sending them to Bill Kennedy with notes that the FBI had not received the backgrounds of the individuals named.⁶⁴¹

Agent Bourke's letters to Kennedy highlight the fact that the FBI had not been provided information on many top White House officials as late as October 1993. In an April 7, 1993 letter to Bill Kennedy, Bourke wrote: "I read an article in the April 6, 1993, edition of USA Today on Jocelyn Elders. It reminded me that we still do not have the paperwork to do her background investigation (BI)."⁶⁴² At the same time that the White House was negligent in obtaining background investigations on new White House staff members, Livingstone and Marceca were ordering the background investigations on former Reagan and Bush officials.

2. Problems in the background investigations of Clinton administration staff

Almost immediately FBI agents reviewing the background files of the new Clinton White House officials noticed significant problems. According to Sculimbrene, the problems in the backgrounds included, "using illegal drugs repetitively, lying to law enforcement officers, lying about school records, being fired."⁶⁴³

⁶³⁶ Schwarz deposition, July 11, 1996, pp. 27-30.

⁶³⁷ Woods deposition, July 10, 1996, pp. 22-23.

⁶³⁸ *Id.*, p. 61.

⁶³⁹ Aldrich deposition, July 18, 1996, p. 20.

⁶⁴⁰ Memorandum to all White House Office Staff from Vincent Foster and William Kennedy, CGE 048210.

⁶⁴¹ FBI document production, July 10, 1996 (unnumbered). March 1, 1993 letter to Bill Kennedy from Jim Bourke; April 7, 1993 letter to Bill Kennedy from Jim Bourke; October 20, 1993 letter to Bill Kennedy from Jim Bourke.

⁶⁴² April 7, 1993 letter to Bill Kennedy from Jim Bourke.

⁶⁴³ Sculimbrene deposition, July 15, 1996, p. 42.

Agent Sculimbrene noted that the drug use was by “older people who had used illegal drugs much more recently, as recently as the Inaugural.”⁶⁴⁴ According to Sculimbrene, these drugs included:

designer drugs . . . I think the first time I heard the word ‘designer drugs’ was off an appointee. Cocaine . . . possibly crack cocaine . . . hallucinogenic mushrooms. I think some people used LSD. It was much more than the one or two times when they were 18 or 19 years old . . . this was not just junior staffers, either.⁶⁴⁵

Agent Sculimbrene noted that he did not believe that “a single person” was terminated because of any information of this nature that became apparent from an FBI background investigation.⁶⁴⁶

FBI Agent Cecilia Woods also found recent drug use in the backgrounds of some appointees and noted one instance where drug usage stopped as recently as the day before an individual filled out the SF-86.⁶⁴⁷

It was in a White House having its own problems completing background investigations that Livingstone and Marceca were busy at work on the “Update Project,” which resulted in the procurement of hundreds of background investigation files of former Reagan and Bush officials.

D. SECRET SERVICE CONCERNS

1. Delays in submitting background investigations to the Secret Service

The Secret Service also became concerned about the delays in the Clinton White House obtaining permanent passes.⁶⁴⁸ Secret Service Agent Arnold Cole was the supervisor of the White House Access Control Branch and was the individual tasked with interfacing with Livingstone’s office.⁶⁴⁹

During the transition, Cole and other security personnel met with Clinton officials regarding security matters. At that time, David Watkins was the point of contact and Cole met with him on several occasions.⁶⁵⁰ At some point later in February, Livingstone was identified to Cole as the person who would be heading up the office.⁶⁵¹

During the spring of 1993, Cole convened a meeting of security officers for March 31, 1993 to meet “new members of the administration and discuss any security issues pertaining to the White House complex.”⁶⁵² These meetings were convened monthly through November 1993.⁶⁵³ Agent Cole testified that the Secret Service received very few background files before the end of 1993.⁶⁵⁴

⁶⁴⁴ *Id.*

⁶⁴⁵ *Id.*, p. 43.

⁶⁴⁶ *Id.*, p. 44.

⁶⁴⁷ Woods deposition, p. 29.

⁶⁴⁸ Cole deposition, p. 18.

⁶⁴⁹ *Id.*, p. 6.

⁶⁵⁰ *Id.*, p. 8.

⁶⁵¹ *Id.*, p. 10.

⁶⁵² *Id.*, p. 15.

⁶⁵³ *Id.*, p. 17.

⁶⁵⁴ Deposition of Arnold Cole, July 10, 1996, p. 25.

As the meetings proceeded through the year, it became apparent that there were problems with staff obtaining permanent passes. Agent Cole testified:

. . . the obvious concern that we had from a security standpoint was that anyone with a temporary pass exceeding 90 days and they have close proximity to the President, we would want to know whether or not this person would pose a possible immediate or projected threat later on. So those were our concerns.⁶⁵⁵

Agent Cole testified that he raised these concerns with Bill Kennedy and explained to him the importance of having the background investigations completed.⁶⁵⁶ Yet neither Kennedy's own background file nor Livingstone's were forwarded to the Secret Service until September 20, 1993.⁶⁵⁷ Following the submission to the Secret Service of both of their backgrounds, it took another 2 months before the Secret Service issued permanent passes to Kennedy or Livingstone on November 23, 1993.⁶⁵⁸ Earlier that month, on November 7, 1993, Livingstone's neighbor filed a complaint with the Montgomery County Police Department, charging Livingstone with a simple assault for threatening her. Mr. Livingstone reportedly said, "If you don't keep that (expletive deleted) dog quiet, I'm going to beat your face in."⁶⁵⁹ The neighbor informed police that Livingstone made previous threats to her in the past, which Livingstone admitted.⁶⁶⁰

Background files with no problems take only several days for the Secret Service to issue a permanent pass. No one at the White House was alarmed when the people whom they put in charge of reviewing backgrounds had problems significant enough to cause a 2 month delay in issuing their permanent passes. A man who made assault threats against a woman was put in charge of security at the White House. This should never have occurred.

2. The Secret Service raised concerns about the content of the background files

The Secret Service raised concerns about whether Livingstone should be granted a White House pass,⁶⁶¹ when it obtained his background file in September 1993. Agent Cole said that he became aware of "derogatory information" in Livingstone's file and raised it with Kennedy:

What I recall discussing with Mr. Kennedy was my concerns on the derogatory information and whether or not he concurred or not . . . he wanted to understand specifically what my concern was as it related to our mission . . .⁶⁶²

⁶⁵⁵ Deposition of Arnold Cole, July 10, 1996, p. 18.

⁶⁵⁶ *Id.*, p. 19.

⁶⁵⁷ GAO draft of data for GAO report, 1/5/95.

⁶⁵⁸ *Id.*

⁶⁵⁹ November 7, 1993 event report to Montgomery County Police of threat to Barbara Ann Sable by Craig Livingstone, #B93-240485.

⁶⁶⁰ *Id.*

⁶⁶¹ Cole deposition, pp. 21-22.

⁶⁶² *Id.*, pp. 22-23.

Agent Cole said there was also information in Kennedy's background file which was brought to his attention that he reviewed from a security standpoint and ultimately resolved in favor of Mr. Kennedy.⁶⁶³

As background investigations of other individuals started coming into the Secret Service in late 1993 and early 1994, it became apparent that there were issues of recent drug use in many files. Agent Jeff Undercoffer, who reviewed files in early 1994, testified: "I would say more than 30, more than 40, perhaps, had drug usage [beyond college age]" . . . and "a few dozens who were recent."⁶⁶⁴ Agent Undercoffer testified to what the files he reviewed included:

I have seen cocaine usage. I have seen hallucinogenic us-
ages, crack usages . . . I would say those are the big
three.⁶⁶⁵

In late 1993, the Secret Service raised concerns over an individual's pass request "based on our review of the background investigation" in which they "felt that the derogatory information was such that it may compromise the security of the White House without some other mechanism in place to ensure that our concerns were just merely concerns."⁶⁶⁶

The Secret Service initially denied pass requests for a number of individuals because of very recent drug use.⁶⁶⁷ Out of this situation, a program was developed whereby the offending individual was required to participate in a special drug testing program for White House employees with recent drug use.⁶⁶⁸

E. WHITE HOUSE DRUG TESTING PROGRAM

In order to obtain the approval of the Secret Service in issuing permanent passes to individuals with recent drug use, the White House instituted a random drug testing program. Agent Cole explained the program: "I think it was a compromise between both the White House and the Secret Service as a suggestion as to what would be amenable to both parties."⁶⁶⁹ According to the White House, the program included as many as 21 people over the past several years according to the White House. These were individuals who had drug use in the year before they began work at the White House. Nine such individuals still are employed at the White House.⁶⁷⁰ As White House Counsel Jack Quinn explained the program:

In a small number of instances, the Office of White House Counsel in consultation with the Secret Service, determined that an individual should be issued a pass only if he or she agrees to be subject to the more frequent, non-random special drug testing protocol described above. This means being tested unannounced twice a year under the same conditions as the standard random testing program

⁶⁶³ *Id.*, pp. 24–25.

⁶⁶⁴ *Id.*, p. 41.

⁶⁶⁵ Undercoffer deposition, p. 42.

⁶⁶⁶ Cole deposition, p. 31.

⁶⁶⁷ *Id.*, p. 32.

⁶⁶⁸ Cole and Undercoffer depositions.

⁶⁶⁹ Cole deposition, p. 32.

⁶⁷⁰ July 31, 1996 letter to Chairman Clinger from Jack Quinn.

in the EOP's Drug-Free Workplace Plan. These individuals are so designated because information developed in the course of the security clearance process or supplied by the individual suggested that it would be prudent to do so.⁶⁷¹

It is important to recognize that this program is handled entirely by the White House Counsel's Office and the drug testing is administered by the EOP random testing program. When an individual is placed in this program, a "drug letter" is placed in his or her file with the Secret Service. The Secret Service is then informed if there is any positive drug testing.

The individual must sign this "drug letter" indicating that they acknowledge the drug use set forth in his or her FBI background investigation and the individual is informed that any positive drug test would be grounds for immediate termination.⁶⁷²

The Secret Service has no role in the procedures for the drug testing program and relies entirely upon the information provided by the White House. There is no independent verification of the information by the Secret Service, which is entirely dependent upon the good faith efforts of the Counsel's Office to comply with the requirements in the "drug letter." The White House Counsel's Office staff who have been involved since 1993 in overseeing or supervising the special drug testing are Bill Kennedy, Beth Nolan and Chris Cerf.⁶⁷³

While the White House went to extraordinary lengths to have recent drug users on staff—it even created a special program to keep them employed at the White House—a June 10, 1993 memo suggests that Bill Kennedy and Craig Livingstone seemed to think drug users might have some kind of "right" to a job at the White House!⁶⁷⁴

In regard to staff who admit present or prior drug use, the June 10, 1993 memo asks: "Does the President have the authority to (1) refuse employment; (2) hire on conditions; send the individual to a health care professional to assess the individual's suitability/risk as a pre-condition of employment; and, (3) hire without any conditions?"⁶⁷⁵ Mr. Kennedy, who oversaw the frivolous firings of the Travel Office, had to ask whether or not the President could deny present drug users a job at the White House.

F. CIA COMPARTMENTED CLEARANCES

The Clinton White House issued the highest of national security clearances, CIA compartmented clearances, to Livingstone, Wetzl and other young staffers in the Office of Personnel Security. Although CIA officials reviewed Livingstone's drug history and FBI background file, it does not appear that the CIA made any objections to issuing Livingstone at least three separate compartmented clearances.⁶⁷⁶ Records the committee has now reviewed make it clear that the Clinton White House gave Craig Livingstone access to the most classified sensitive information.

⁶⁷¹ *Id.*

⁶⁷² July 31, 1996 letter to Chairman Clinger from Jack Quinn.

⁶⁷³ *Id.*

⁶⁷⁴ June 10, 1993, "Assignment from Bill Kennedy & Craig Livingstone," CGE 047888.

⁶⁷⁵ *Id.*

⁶⁷⁶ CIA documents, located in committee files.

The committee was troubled by the ease with which unsuitable candidates were given the highest levels of security clearances. The CIA explained to the committee that it authorized the clearances, including that of Livingstone, because the White House made the requests.

Finally, even when the White House decided to upgrade the security clearance process, Livingstone was given special treatment again. Current White House Security Chief Charles Easley testified that he did not review Livingstone's file when he was updating the clearances of everyone at the White House.⁶⁷⁷ Mr. Easley testified that even though he reviewed the file of everyone else he worked with at the White House, he declined to review Livingstone's file and approved him for a security clearance in December 1995.⁶⁷⁸ This is the individual the White House put in charge of the security office when Craig Livingstone resigned.

The lax and cavalier attitude the Clinton White House has regarding security was evident from the day Kennedy and Livingstone were placed in positions of responsibility at the White House. Mrs. Clinton had a role in Kennedy's hiring. Mr. Kennedy took full advantage of his connections to the President and Mrs. Clinton, informing FBI liaison Bourke of the relationship. Both Kennedy and Livingstone were unsuited to this sensitive work given problems with their own backgrounds and evidence of questionable conduct.

Despite complaints from the FBI and Secret Service about inordinate delays and abuse of past processes, the White House continued to allow unsuitable individuals to preside over the office. The White House ignored FBI and Secret Service concerns, and the office was eventually found to have inappropriately gathered FBI background files on hundreds of former Reagan and Bush officials.

The White House is at the center of policies and debates that may determine matters of life or death, war or peace. For the past 30 years, the White House has engaged in a careful process of security clearances and background checks on individuals to determine their suitability for positions in the White House and throughout the executive branch.

The clearance and background process is designed to protect the security of the President as well as the national security of the country. One need only recall the case of Aldrich Ames to realize what kind of problems can spring from a lack of vigilance in security matters. As important as it is to have solid procedures in place to guard against breaches of security, the people who operate such procedures must be carefully selected and remain above reproach. Clearly, that did not happen in the Clinton White House where cronies and political operatives were put in charge of these sensitive matters.

Whether or not these events are shown to be a blunder, the result of colossal incompetence, or whether they are established to be more serious or even criminal, the casualness with which this White House has approached many areas of security and access provided a climate for either of these troubling alternatives. The

⁶⁷⁷ Easley deposition, p. 72.

⁶⁷⁸ *Id.*

modus operandi of this White House allowed persons of questionable backgrounds to remain in the White House.

ADDITIONAL VIEWS OF HON. WILLIAM F. CLINGER, JR.,
HON. BENJAMIN A. GILMAN, HON. CONSTANCE A.
MORELLA, HON. JOHN L. MICA, AND HON. DICK CHRYS-
LER

Nothing in the hearing record or the entire course of our inquiry into this matter has established any improper contacts, dealings, or relationship whatsoever, between FBI Director Louis Freeh and former White House Security Director Craig Livingstone.

Neither, is there any evidence of anything in the record of our inquiry (particularly as relates to the subject matter of the inappropriate disclosure by FBI General Counsel Howard Shapiro to the White House), which indicates any intent whatsoever by Director Freeh to protect the President or Mrs. Clinton in this matter.

FBI General Counsel Shapiro's lack of judgement in an ill advised disclosure to the White House, should not be viewed as reflecting adversely on the professionalism or independence of Director Louis Freeh, nor the many dedicated men and women of the FBI, who proudly serve our Nation so well, each and every day.

In addition, we recommend that in the future, all supervisory, operational, and line positions, including that of general counsel at the FBI, shall be filled solely by FBI agent personnel.

HON. WILLIAM F. CLINGER, JR.
HON. BENJAMIN A. GILMAN.
HON. CONSTANCE A. MORELLA.
HON. JOHN L. MICA.
HON. DICK CHRYSLER.

MINORITY VIEWS OF HON. CARDISS COLLINS, HON. HENRY A. WAXMAN, HON. TOM LANTOS, HON. ROBERT E. WISE, JR., HON. MAJOR R. OWENS, HON. EDOLPHUS TOWNS, HON. JOHN M. SPRATT, JR., HON. LOUISE MCINTOSH SLAUGHTER, HON. PAUL E. KANJORSKI, HON. GARY A. CONDIT, HON. COLLIN C. PETERSON, HON. KAREN L. THURMAN, HON. CAROLYN B. MALONEY, HON. THOMAS M. BARRETT, HON. BARBARA-ROSE COLLINS, HON. ELEANOR HOLMES NORTON, HON. JAMES P. MORAN, HON. GENE GREEN, HON. CARRIE P. MEEK, HON. CHAKA FATTAH, HON. BILL K. BREWSTER, HON. TIM HOLDEN, AND HON. ELIJAH E. CUMMINGS

We agree that the requests by White House staff for files on former employees were wrong, and we have supported the committee's efforts to investigate the reasons for and circumstances surrounding the obtaining of these records from the FBI. The issue for this committee is whether the files were requested for political purposes with the intent of getting damaging information on these former employees, or instead were requested as the result of errors.

After taking sworn depositions from dozens of present and former White House employees, the committee has uncovered no evidence that the individual who requested the files had been ordered to purposely obtain them by higher-ups in the Clinton administration. Nor has it uncovered any evidence that anyone higher than Craig Livingstone was aware that the files had been improperly requested. Even more importantly, the committee has no evidence that the files were improperly disclosed to anyone outside the White House Personnel Security Office.

If the majority had issued an honest report by pointing out the deficiencies of the Office of Personnel Security while acknowledging the lack of evidence that it was anything more than a bureaucratic mistake, we would have supported it. But when the majority makes such reckless findings as that this somehow "leads to the possibility that the Clinton Administration was attempting to prepare a political 'hit list'," without even a shred of evidence or testimony supporting that charge, we can only conclude that honesty is not in the majority's vocabulary. This report is yet another blow to this committee's long tradition of oversight which is honest, fair, non-partisan, and credible.

In addition, the majority's claim that the FBI files would not have been revealed without the committee's threat of contempt is disingenuous and inaccurate. The White House never exerted a claim of privilege over the Dale FBI file, and the majority report's allegation of White House stonewalling is no more credible here than it was in the Travel Office report.

Further, the majority's shameless attack on FBI General Counsel Howard Shapiro, a career, non-partisan law enforcement professional with unimpeachable credentials, for actions which were clearly appropriate, is outrageous and an embarrassment to the committee. If the majority believes that Mr. Shapiro should resign for disclosing what it claims was "confidential law enforcement information," then Chairman Clinger should also resign for disclosing that very information in a public statement on the House Floor. It is transparently obvious that the majority is angry at Mr. Shapiro only because his efforts to act in a fair and non-partisan manner thwarted its attempt to score points in the press.

For these reasons, we strongly dissent.

We in the minority have addressed the problems identified in the FBI's report, "The Dissemination of FBI File Information to the White House" in order to guarantee that this sort of potential invasion of privacy could not happen again. We support the bill introduced by Ranking Minority Member Cardiss Collins, H.R. 3785, the Background Security Records Act of 1996, to ensure that FBI records containing sensitive background security information provided to the White House are properly protected for privacy and security.

The bill would amend both the Privacy Act and the Presidential Records Act to enact procedural safeguards so that individuals could be certain their confidential background files would not be disseminated without their permission. If the majority were truly interested in conducting responsible oversight and addressing these types of problems, they would support these types of meaningful legislative reforms. Instead, they are intent on turning this serious issue into partisan politics. The Republicans have also refused to hold even a single hearing on the bill.

WHAT THE COMMITTEE HEARINGS REVEALED

The committee's hearings revealed a number of relevant facts about the FBI files. We learned that it was standard practice for each administration to engage in what is now known as the Update Project—that is, the recreation of personnel security files for hold-over employees from the previous administration. This was required, because each administration removes all of its files when it leaves office. The procedure for requesting files was to use a preprinted Xeroxed form with the name of the White House Counsel typed at the top, but requiring no signature. These forms date back 30 years to the Johnson administration. This procedure was, as the FBI found, ripe for abuse, and it now appears that these forms were inadvertently used to obtain the FBI files on former employees. The White House has taken unprecedented steps to change these procedures and bring accountability to the process, but the files were already requested.

Witnesses interviewed by the committee could only speculate on the reasons for what happened. A common theme expressed by Bush administration White House Counsel C. Boyden Gray and Nancy Gemmell, a longtime-aide in the Personnel Security Office, was that the use of detailees and interns with insufficient background in security or name recognition was a key problem.¹ We agree. Security work is extremely sensitive, but there appears to have been an extremely lax attitude in the treatment of FBI files.

One important witness was Lisa Wetzl, who was the first to discover that Anthony Marceca had requested “too many files”, meaning those no longer employed by the White House. Ms. Wetzl notified her supervisor, Craig Livingstone, of that fact, and proceeded to determine which of the files involved employees no longer working in the White House. Although the files should have been returned to the FBI, they were boxed and apparently indexed and placed in the White House archives, where there is no evidence they were seen again, with the apparent exception of files for active employees mistakenly placed there.

Ms. Wetzl’s testimony is extremely relevant, because she has stated that when she worked on the Update Project after Mr. Marceca, she requested a Secret Service list of employees holding active passes. In her view, the list was out-of-date, and required cross-checking with offices. She also recalls seeing an out-of-date Secret Service list, which she believes was requested by Ms. Gemmell, and used by Ms. Gemmell to prepare requests to the FBI, and that the list may have had the names of Marlin Fitzwater and James Baker.

On June 20, 1996, Secret Service witnesses testified before the Senate Judiciary Committee that they did not believe the list was generated by them, but the actual evidence suggests a less clear picture. For example, during the committee’s depositions of Secret Service witnesses, it was noted that in one case, the White House requested the previous report on a person named Agin—“A” “G” “I” “N”. It now appears that there was no such person. The correct individual was named Hagin—“H” “A” “G” “I” “N”. It just so happens that a Secret Service list from 1993 also listed the individual as Agin, with a space rather than an “H” at the beginning of the name.

The significance of this fact is that it suggests that the White House Office of Personnel Security was in fact working off of some Secret Service list, and not a list it generated. This was further confirmed by Ms. Wetzl, who recalled both Ms. Gemmell and Mr. Marceca working off a list with the distinctive green and white computer paper used by the Secret Service.

The Senate hearing also showed other problems with the Secret Service lists. For example, in what was described as a “computer glitch”, names that were being deactivated from one Secret Service passholder list were not automatically being deactivated from another list. The committee also received a list from the White House dated March 31, 1993, which may have been generated by the Secret Service. That list is entitled “E-Pass Possible Admin Holdover

¹ It should be noted that neither Ms. Gemmell nor Jane Dannenhauer, Mr. Livingstone’s predecessor, had any background in security issues.

Passholders by Name”, and includes among other names, George Bush, James Baker, and Marlin Fitzwater.

In addition, the committee received a list generated in February 1994 as part of an effort to develop a list of White House staff for such things as invitations to the White House Easter Egg Roll. That list has names such as Spencer Abraham and James Baker as working in the White House. The source of the names is listed as the Secret Service. A follow-up agenda from a July 7, 1994, meeting between White House personnel and Secret Service shows a complaint that former employees, such as James Baker, continued to show up on Secret Service lists.

The other interesting fact about the FBI files requests is that the requests were made for all other offices, such as GSA, before any requests were made for White House staff. If there were an underhanded effort to get the files on former White House employees, presumably those files would have been requested first and not last.

CHAIRMAN CLINGER’S DISCLOSURES

Ironically, the only public disclosure of an FBI background file to date has been Chairman Clinger’s disclosure on the House Floor of the contents of the FBI file on Craig Livingstone, which he was permitted to review by the FBI. Contained within this file was the summary report by Special Agent Dennis Sculimbrene that White House Counsel Bernard Nussbaum told him that Craig Livingstone had the backing of the First Lady, who was a friend of Livingstone’s mother.

This tidbit was the first item of news from our investigations and hearings on the FBI files that the chairman deemed important enough to take to the House Floor. The chairman’s special order insinuated that Bernard Nussbaum, Craig Livingstone, William Kennedy and the First Lady must have lied, because they had denied this allegation.

Perhaps the chairman was just raising an issue for investigation; but that could have been done in a letter to the Independent Counsel. We can only conclude that the clear purpose of the Floor statement was to plant in the minds of the American people the unsubstantiated thought that the First Family and all of their lawyers were lying about this matter. Indeed, who after watching this special order wouldn’t think they were lying and raise the question of why an FBI agent would write this note if it weren’t true?

Yet, just like every other time that there has been a wild, unsubstantiated accusation hurled at the occupants of the White House, only half the facts were released. In this case, neither House Members on the Floor nor the public who was watching were given information on the credibility of the agent who had written the note.

The allegation that Mrs. Clinton was behind the hiring of Craig Livingstone and knew his mother was hardly news. Agent Gary Aldrich, a friend and colleague of Mr. Sculimbrene, had made the charge in the Wall Street Journal and in his widely discredited book, *Unlimited Access*. The allegation had also appeared in the Wall Street Journal on June 25, but in this case, Mr. Sculimbrene was reported to have attributed the remark not to Mr. Nussbaum, but to William Kennedy and Craig Livingstone.

Then on July 15, in what the chairman described in his letter to Ranking Minority Member Collins not as a deposition under Rule 19 of the committee rules, which requires 3 days written notice, but something called a “sworn interview,” Mr. Sculimbrene told the majority staff that it was Mr. Livingstone who actually told him this fact. He also said he did not put the statement in Mr. Livingstone’s background file.

Mr. Sculimbrene in fact has told numerous stories about how he came to know this so-called fact. We might have never known about the discrepancies in Mr. Sculimbrene’s statements to the majority staff in his interview, if the minority had not insisted on getting the transcript, which the majority had initially refused to provide. In assessing Agent Sculimbrene’s credibility, we must also look at an FBI memo in the committee’s possession, in which Special Agent David Bowie stated that Mr. Sculimbrene’s behavior was “abnormal and indeed irrational” in a conversation with him. Agent Sculimbrene, who is described in the memo as a close personal friend of fired Travel Office head Billy Dale, is recalled as “voicing very bitter political feelings against the Clinton White House.” Agent Bowie expressed his concern that Sculimbrene, who appeared as a defense witness at the Dale trial, might “provide erroneous testimony.”

We cannot help but wonder why, if this allegation was truly troublesome, the committee’s investigators did not go to Craig Livingstone’s mother, Gloria, to ask her directly whether she knew the First Lady. She has subsequently denied that she does. Perhaps a cursory review of her background could have revealed if there were any truth to the allegation. We suspect the reason was obvious—they knew she would deny it, and they knew that the more they investigated this matter, the more implausible the allegation would become.

We must also address the issues of whether the FBI should have told the White House about the existence of this summary in the file, the majority’s finding that FBI General Counsel Howard Shapiro provided confidential FBI law enforcement information to the White House, and the majority’s shameless demand that he resign.

First, it is obvious that the reason the majority was upset about the notification is simply that the White House had an opportunity to present its side of the story at the same time the chairman went to the Floor, as opposed to a day later. There is little doubt that the other side of the story would not have been released by the chairman and become available to the White House.

Second, the notion that the information was confidential law enforcement information which should not have been shared with the White House is absurd. The information, as is standard practice, was gathered at the specific request of the White House in order to determine whether Mr. Livingstone was suitable for employment. It was not part of some sort of criminal investigation. A summary of that information, including any derogatory information, had already been provided to the White House. The information which Mr. Shapiro communicated to the White House was not derogatory, nor was it confidential as far as the White House was concerned.

Third, the statement that Mr. Shapiro notified the White House about the information before the committee was allowed to review it is simply not true. As Mr. Shapiro testified at the August 1, 1996, hearing, he had offered to make it available to the majority, but they had rescheduled:

My intent was to notify roughly simultaneously both the committee and the White House, for whom this information had originally been gathered. Knowing that committee majority staff was due to examine the materials that same afternoon, I placed a call to the Justice Department, where I advised the Chief of Staff to the Deputy Attorney General of the information and of my intent to advise the White House Counsel's office. I then called the Counsel's office, and spoke with Deputy Counsel to the President, Kathleen Wallman. Because of a last minute rescheduling by the committee staff of which I had been unaware, the majority staff did not in fact see the information until the following day.

In no way did Mr. Shapiro withhold the information, as claimed by the majority.

Fourth, before the FBI took any action with this information, it asked the one law enforcement entity which might have an interest, the Independent Counsel. As Mr. Shapiro testified, the Independent Counsel had no problems with Congress reviewing the files, nor did they ask that any conditions be placed upon its release, which could have included release to the White House. They did not even want to review the file. To the extent Mr. Nussbaum would have been testifying to a Grand Jury, the issue would not have been who hired Craig Livingstone.

Finally, Chairman Clinger's Floor statement criticized two FBI agents for going to Agent Sculimbrenne's home and telling him that the White House was unhappy with what he had written about Mr. Nussbaum's interview. Once again, the question is what type of investigation did the committee do to determine the veracity of this charge against the two agents before making these public charges. Mr. Shapiro testified that the agents in question denied the allegation:

At no time did the agents tell agent Sculimbrenne that the White House was unhappy and concerned about this particular interview. No such thing occurred.

Therefore, it appears that this may be one more case in which Agent Sculimbrenne's account of a conversation is disputed.

The concern of the FBI that in light of the denials, Agent Sculimbrenne's report may have been inaccurate, was a real one. Just recently, FBI Agent Halbert Harlow was convicted of falsifying over 50 White House interviews.

When this committee began its hearings into the FBI files, we in the minority fully concurred. We too wanted to get to the bottom of how and why the files were requested, and what was done with them. However, as the committee's investigation increasingly demonstrated that the requests were in fact a bureaucratic error and not a sinister plot, the committee hearings kept shifting their focus.

REVEALING CONFIDENTIAL FBI INFORMATION

The majority has repeatedly disclosed sensitive, internal FBI files, despite the majority's criticism of the White House for its handling of FBI records. As previously discussed, when Chairman Clinger went to the House Floor on July 25, 1996, he divulged certain contents in the FBI file of Craig Livingstone. The divulging of confidential derogatory information found in that file is exactly the concern that the committee had expressed concerning the White House request of FBI files of former administration employees. Ironically, the committee has uncovered no evidence that the White House ever disseminated the information contained in those FBI files. On the other hand, the chairman did.

The disclosure stands in stark contrast to his comments to Ranking Minority Member Collins in a letter dated July 15, 1996, in which he wrote: "I have been extremely reluctant to directly review FBI files. It is the abuse of such files by the Clinton White House which initiated this congressional investigation." He then stated that he "would determine what, if any, information may be shared with the Members of this Committee." Instead of consulting with any member of the committee, the speech was made on the House Floor before the C-Span public.

Even before the chairman went to the House Floor, the contents of Mr. Livingstone's files were in the press. An AP story of 4:39 p.m. on July 25, 1996, describes an FBI agent's notes alleging that he was told by Bernard Nussbaum that Mr. Livingstone had been recommended by the First Lady and that Mrs. Clinton knew his mother. Before rushing to the Floor to raise questions about the integrity of the First Lady, Mr. Nussbaum, and Mr. Livingstone, the committee might have done at least a minimal amount of investigation.

Minimum fairness to the individuals would have required full disclosure of the trustworthiness of Special Agent Sculimbrene. Among the documents requested by subpoena was a memo by SSA David Bowie, dated August 7, 1995, who recounted a discussion he had with Agent Sculimbrene concerning the prosecution of Billy Dale (Document FBI-00005437-00005442):

It became immediately apparent that SA SCULIMBRENE held extremely intense feelings about the indictment of subject BILLY DALE whom he described as a personal and professional friend. It became equally apparent that SA SCULIMBRENE blames the CLINTON WHITE HOUSE and the FBI for the predicament in which subject DALE finds himself. During the course of a sometimes heated conversation between the writer and SA SCULIMBRENE, it became equally apparent that SA SCULIMBRENE has allowed both his personal and political feelings to obscure his judgement relative to this entire matter.

* * * * *

Specifically, SA SCULIMBRENE erroneously stated that he had provided a memo to the writer in the White House Travel Office matter allegedly containing the information relevant to the inquiry. . . . The writer never received a memo from SA SCULIMBRENE dealing with the above subject matter.

* * * * *

In fact, the information provided by SA SCULIMBRENE during conversations with the writer merely implies that he has very strong political views involving the CLINTON Administration and a close personal relationship with the subject of this matter, BILLY R. DALE. . . .

The writer is very concerned about the overall temperament and demeanor of SCULIMBRENE reflected on 8/4/95. While the writer is not in a position to render Psychological judgements/conclusions about others, it is the opinion of this writer that SA SCULIMBRENE's conduct/behavior, on 8/4/95, is clearly outside the norm. The writer notes that SA SCULIMBRENE was involved, approximately a year ago, in a serious accident which almost cost him his life. It is noteworthy to point out that during the course of the 8/4/95, discussions with the writer, SCULIMBRENE commented, while pointing towards his head, that he could get away with anything because "I am handicapped".

* * * * *

SSA BOWIE is very concerned that SA SCULIMBRENE has allowed his personal and political feelings toward the CLINTON White House to destroy his objectivity in dealing with this issue. It is equally perplexing to understand why any FBI Agent would allow his personal relationships with a subject of a criminal probe to become this involved as such behavior constitutes, as a minimum, the appearance of a conflict of interest. The writer is persuaded that SA SCULIMBRENE is contemplating either testimony before a Congressional Committee and/or plans to serve as a defense witness for subject BILLY DALE. Should he decide to do this, his credibility as a witness and as a FBI Agent will be destroyed in the aftermath. The situation detailed above is potentially embarrassing for the FBI and is potentially a disaster for SA SCULIMBRENE.

* * * * *

It is highly suggested that WMFO management look at the possibility that SA SCULIMBRENE may be in need of EAP and/or some form of emotional support. The writer is persuaded that SCULIMBRENE's behavior is abnormal and indeed irrational. In addition, SA SCULIMBRENE should be made aware of the consequences should he decide to provide erroneous testimony in an effort to help his friend, and C-7 subject, BILLY R. DALE.

Instead of alerting House Members and the public that the FBI agent whose notes conflict with the testimony of Mr. Nussbaum and Mr. Livingstone was a close personal friend of Billy R. Dale, and whose credibility was challenged by another FBI agent, Chairman Clinger was silent, leading an average listener to assume that Mr. Sculimbrene was an ordinary FBI agent. Chairman Clinger might have disclosed that Mr. Sculimbrene was an associate of Mr. Gary Aldrich, whose credibility on White House matters has been, to put it mildly, called into question.² He also never stated that Agent Sculimbrene was quoted in the Wall Street Journal as stating that he knew of the purported relationship between Mr. Livingstone's mother and the First Lady from Mr. Livingstone and Mr. Kennedy (June 25, 1996), and that he had told Senate investigators that Mr. Kennedy was the source of his information.

The majority does not merely raise questions when making charges such as those made in Chairman Clinger's special order. If the sole intent was to bring this to the attention of the Independent Counsel, a private letter to Mr. Starr would have sufficed.

But this was not the only example of the majority's rushing to a partisan judgment without conducting even a minimal amount of investigation. On June 5, 1996, Chairman Clinger held a press conference detailing a request for Billy Ray Dale's FBI background file that bore Mr. Nussbaum's typed name. The chairman alleged that "At the very least, there is a strong implication President Clinton's counsel acted unethically in requesting confidential background checks of a former employee." According to an article distributed by the Associated Press, "U.S. Rep. William Clinger, R-Pa., suggested the written request might be a false statement that could be prosecuted as a felony." Subsequent investigation quickly established that Mr. Nussbaum, like his predecessors, never reviewed such requests.

As Mr. Nussbaum testified at the committee's June 26, 1996, hearing:

So, on the basis of a printed form, Mr. Chairman, you told the country, Mr. Chairman, that, at best, I was unethical as White House Counsel; at worst, I was a felon. . . . But you had no member of your staff call me, to ask me a simple question—did I ever request Billy Dale's FBI files six months after he was fired? Was I really trying to dig up dirt on Billy Dale when he was being investigated by the Justice Department? Those notions are absurd on their face. They are false. *But no one called to ask.* (Emphasis added).

Mr. Nussbaum then testified under oath that he had no knowledge that Mr. Dale's or any other former White House employee's

²It is ironic that in light of the majority's repeated claims of stonewalling by the administration, Mr. Aldrich refused to answer under oath more than 30 questions asked by minority counsel regarding statements he made in his book. Rather than assisting in this committee's efforts to obtain relevant information regarding the credibility of a witness, majority staff also obstructed the minority's efforts to have these questions answered by Mr. Aldrich.

In a letter dated August 2, 1996, Ranking Minority Member Collins subsequently requested Chairman Clinger to instruct Mr. Aldrich to respond to these 36 questions. To date, he has not responded.

FBI files had been requested, and that he certainly did not order copies of FBI files.

The chairman responded by saying that the “documents speak for themselves,” and dismissed Mr. Nussbaum’s demand for an apology by suggesting that he was attempting to “demonize” him. We believe this is a wholly inadequate response. The chairman very publicly—and wrongly—accused Mr. Nussbaum of possible criminal behavior, without conducting even a minimal amount of investigation. Whether those accusations were innocent or intentional, the record clearly demonstrates that they were false.

When we in the minority requested, in a letter dated June 28, 1996, that the chairman take the fair and decent course by admitting that he overreached and apologizing to Mr. Nussbaum, he once again refused. Instead, he replied:

. . . (A)s you will see, I never made reference to Mr. Nussbaum as a “felon,” as he has alleged. In fact when I was specifically asked, “How much trouble is Mr. Nussbaum in?” I stated, “Well, I think it’s premature to say whether, you know, whether he’s in any trouble.”

However, the transcript of that press conference, provided by the chairman himself in his reply, confirms that the chairman did make those statements about Mr. Nussbaum to the press:

At the very least, there is a strong implication President Clinton’s counsel acted unethically in requesting confidential background checks of a former employee. At the very worst, the request may have violated the Privacy Act . . .

The chairman has yet to admit his error or to apologize to Mr. Nussbaum. Nor has he apologized to Presidential Advisor George Stephanopoulos for partisan leaks suggesting that Mr. Stephanopoulos was somehow responsible for Mr. Livingstone’s position as Director of the Personnel Security Office without releasing other information in the committee’s possession demonstrating that that was not the case.

WHO HIRED CRAIG LIVINGSTONE?

The majority is obsessed with determining who hired Craig Livingstone, as if that startling mystery was the key to unraveling their entire conspiracy theory. However, the records provided to the committee, if the majority would take the time to read them, reveal exactly how Mr. Livingstone was hired. The answer is much less exciting than the majority would have us believe.

The resume of David Craig Livingstone lists his current job as “Presidential Inaugural Committee, Director of Security” from November 1992 to present. Prior to that he lists his occupation as “President-Elect Clinton and Vice-President-Elect Gore, Lead and Site Lead Advance” in November 1992. Prior to that his job is listed as “Senior Consultant to Counter-Event Operations, Clinton/Gore ’92” from October, 1991 to November 1992.

At the top of the resume is a handwritten notation stating “Sponsored by Eli Segal.” Mr. Segal, who was a campaign manager in the Clinton Campaign is also the first reference in Mr. Living-

stone's resume, and is listed as "Chief Financial Officer, Clinton-Gore Presidential Transition Team."

On February 8, 1993, Mr. Livingstone signs a "Declaration of Appointee", which is a form used in determining fitness for employment.

The job of Director of the Office of Personnel Security is supervised by the Office of White House Counsel. In a memorandum from David Watkins, Assistant to the President for Management, to Bernard Nussbaum, Assistant to the President and Counsel, and Vincent Foster, Deputy Assistant to the President and Deputy Counsel, dated February 16, 1993, Watkins lays out the budget and full-time employees, which are to be proposed for the Counsel's Office budget.

It appears from the memo that Watkins had authorized 28 slots at \$1,100,000. The Counsel's Office had responded with a budget of 25 slots at \$1,100,000 along with a proposal to shift the three employees of the Security Office, other than its head, to the Personnel account. Watkins responds that if the slots are shifted, the Office of White House Counsel must reduce its budget by \$85,000.

On February 17, 1993, Craig Livingstone sends a memo to William Kennedy, Associate Counsel to the President, describing the functions of the Security Office.

On February 18, 1993, Kennedy sends a memo to Vincent Foster attaching Livingstone's memo. He writes, "The result of all of these functions is that the Office moves much paper. I need to discuss this subject with you when you have time."

On February 23, 1993 Kennedy sends a memo to Nussbaum describing the major functions of the White House Security Office, apparently based upon Livingstone's memo.

On February 24, 1993, Nussbaum and Foster (now also joined by William Kennedy, Associate Counsel to the President) respond to the Watkins memo taking issue with their allocation. They note that they propose to spend just \$91,000 on the three assistants (compared with \$121,000 under the Bush administration) and just \$45,000 on the head of the office (compared with \$67,000 for the incumbent), apparently implying that they should not have their budget reduced by \$85,000 in light of their savings.

On March 1, 1993, David Watkins sent a memo to Bernard Nussbaum stating, "I understand from your budget that you believe the position currently held by Jane Dannenhauer, Assistant to the Counsel to the President for Security, should be part of your budget and should be compensated at a rate of \$42,000 per year. Please let me know when you have identified the new staffer to fill Ms. Dannenhauer's position. At the moment, her salary of \$70,255 is counting against your budget. But this amount will be reduced when you replace Ms. Dannenhauer." Watkins also consents to giving the Counsel the full \$1,100,000 for 25 slots.

On March 9, 1993, in a memo to David Watkins from Bernard Nussbaum and Vincent Foster, they state that "Craig Livingstone was hired in February as Assistant Counsel to the President for Security with a salary of \$45,000, not \$42,000 as originally budgeted."

On March 10, 1993, William Kennedy sends a memo to David Watkins. It states "This is a request that the start date of the em-

ployment of two individuals employed in the White House Security Office be established as of the following dates: David Craig Livingstone; Title: Assistant to the Counsel to the President (Security); Effective Employment Date: 2/8/93; Annual Salary \$45,000." The other individual is Mari Anderson, who is listed as Security Assistant with an effective employment Date of 2/15/93. The memo states, "Mr. Livingstone and Ms. Anderson have been on the job and working since the start dates indicated above while the budget parameters were being resolved."

A document entitled, "The White House Office, Request for Personnel Action" dated 3/11/93, bears the initials "DW/CL" (presumably David Watkins; the CL may also be CC). It requests Livingstone be put on the payroll retroactively to 2/8/93.

A document entitled, "Notification of Personnel Action" with an approval date of March 11, 1993, shows that Mr. Livingstone has been placed on the payroll retroactively to February 8, 1993, as Assistant to the Counsel to the President (Security). The document bears the typed name of Mary Coutts Beck, Acting Director of PMO, along with some form of an initial.

It would appear that Mr. Livingstone's recollection of the events leading up to his hiring, described when he appeared as a witness, are generally accurate. He apparently moved into the White House by way of the campaign and the Inauguration, where he served as Director of Security for the Inaugural Committee. His resume shows he was sponsored by Eli Segal, a campaign official and involved in the transition.

Mr. Livingstone apparently came to the White House on February 8, 1993 on an unpaid basis, and appears to have spent his first week reviewing the operations of the Security Office. The work would appear to have been done on behalf of William Kennedy, since the memo of February 17, 1993 was sent from Livingstone to Kennedy.

It appears that during the week from February 16, 1993 to February 24, 1993, the Counsel's Office was primarily interested in achieving a larger budget by moving the personnel from the Security Office (except for its head) onto the payroll of the Personnel Office.

Eventually, in memos to David Watkins dated March 9, 1993, and March 10, 1993, Nussbaum, Foster, and Kennedy all take responsibility for the hiring of Livingstone. Watkins on the subsequent day takes the final action resulting in Livingstone's hiring retroactive to the date of his declaration on February 8, 1993.

HON. CARDISS COLLINS.
HON. HENRY A. WAXMAN.
HON. TOM LANTOS.
HON. ROBERT E. WISE, JR.
HON. MAJOR R. OWENS.
HON. EDOLPHUS TOWNS.
HON. JOHN M. SPRATT, JR.
HON. LOUISE MCINTOSH
SLAUGHTER.
HON. PAUL E. KANJORSKI.
HON. GARY A. CONDIT.
HON. COLLIN C. PETERSON.

HON. KAREN L. THURMAN.
HON. CAROLYN B. MALONEY.
HON. THOMAS M. BARRETT.
HON. BARBARA-ROSE COLLINS.
HON. ELEANOR HOLMES NORTON.
HON. JAMES P. MORAN.
HON. GENE GREEN.
HON. CARRIE P. MEEK.
HON. CHAKA FATTAH.
HON. BILL K. BREWSTER.
HON. TIM HOLDEN.
HON. ELIJAH E. CUMMINGS.